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# ENDANGERED SPECIES ACT AMENDMENTS

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Endangered Species Act Amendments,...

HEARING

BEFORE THE

## COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

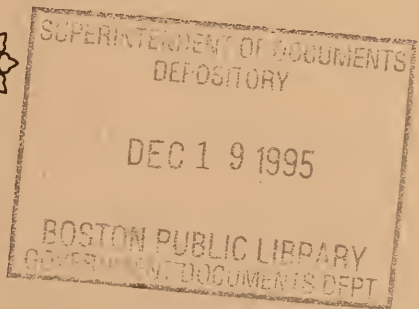
**H.R. 2275**

**A BILL TO REAUTHORIZE AND AMEND THE  
ENDANGERED SPECIES ACT OF 1973**

SEPTEMBER 20, 1995—WASHINGTON, DC

**Serial No. 104-37**

Printed for the use of the Committee on Resources





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# ENDANGERED SPECIES ACT AMENDMENTS

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WEDNESDAY, SEPTEMBER 20, 1995

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RESOURCES  
*Washington, DC.*

The committee met, pursuant to call, at 11:10 a.m., in room 1324, Longworth House Office Building, Hon. Richard W. Pombo, presiding.

## STATEMENT OF HON. RICHARD W. POMBO, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. POMBO. This hearing will come to order. We are going to go ahead and get started. I would like to welcome everybody here today. I have a brief opening statement and then someone from the minority side will also have an opening statement, then we will move as expeditiously as possible into the panels.

This hearing is scheduled today on the Endangered Species Conservation and Management Act, H.R. 2275. I sincerely appreciate the willingness of the Chairman to address this extremely important issue and the leadership he has shown in making this bill one of the top legislative priorities of the 104th Congress.

I am happy to have co-authored this legislation, which has the bipartisan support of 117 of our colleagues. I would also like to thank the Chairman for allowing me to serve as Chairman of the Endangered Species Act Task Force. I appreciate having had the opportunity to provide the committee an extensive review and analysis of the problems associated with the current Endangered Species Act.

Finally, I would like to thank all of those who participated in the task force hearings for taking the time out of their busy schedules to see firsthand how the ESA is being implemented in the different regions of the country.

The Endangered Species Act Task Force held seven field hearings from coast to coast, and three more in Washington, D.C., during March, April and May of 1995. In fact, the task force held more field hearings on the ESA in three months than in all of the previous 22 years since the Act was signed into law in 1973. In addition, the task force has received letters and comments from thousands of concerned citizens nationwide. H.R. 2275 was created from the ideas and suggestions provided by the 161 witnesses and the thousands of letters received during these hearings.

The current Endangered Species Act celebrates its 23rd birthday this year, and has been due for a rewrite since 1992. Like many other conservation laws, it has become outdated and outmoded by

advances in science and technology. Numerous scientific experts have recognized that there are some species that should not have been listed and some species that simply cannot be saved.

At the same time the Act has been inflicting a disproportionate amount of sacrifice—human, economic and social—at an enormous cost. Make no mistake, I believe in the goals of the Endangered Species Act. I also believe, however, that it must be comprehensively rewritten to restore this law to its original intent. H.R. 2275 is the correct path to that reform.

The current ESA imposes stifling command and control bureaucratic regulations to accomplish the goal of species conservation. This is no longer necessary in an era of new environmental awareness on the part of the American people. People want to save species and want incentives to do them, not conflict and controversy.

H.R. 2275 bases conservation efforts on the best possible science to restore the faith of the public in decisions made by the government. The bill bases listing decisions on current factual information and requires an adequate peer review of all of the data. It also makes all of the data used in the listing process open to the public. It also encourages voluntary measures to protect species including cooperative management agreements, habitat reserve grants, land exchanges, and habitat conversation planning. This represents a dramatic positive shift from the current law.

The current Act imposes burdens on individual private landowners when biologically valuable resources are discovered on their property. Since it does not recognize constitutionally protected private property rights, the ESA gives landowners no incentive to harbor endangered species. Instead, it places the costs and the burden of species conservation not on society as a whole, but on the backs of private property owners.

H.R. 2275 protects private property rights. It recognizes that the goal of species conservation is a societal benefit, therefore society should bear the costs. By punishing private property owners for having endangered species on their property, we have caused people to fear the Endangered Species Act, not embrace it.

Specifically, H.R. 2275 compensates property owners when the restrictions imposed by this law diminish the value of their land by 20 percent or more. Of course, it honors all local zoning and nuisance laws of the states in the process. By recognizing property rights, landowners will no longer fear having endangered species on their land. The result will be an unleashing of the conservation ethic within our nation's landowners and the dramatic enhancement of our rich biological heritage.

The current ESA focuses on the preservation of undeveloped land, while discouraging good management efforts to increase species populations. The success of the peregrine falcon, for example, would not have been realized if it weren't for the captive breeding program for that species. The ESA must be improved to allow for greater use of similar efforts.

H.R. 2275 recognizes that our efforts to save species should incorporate the innovative ideas emerging from the American people. It utilizes scientific advances in captive breeding and species propagation programs to restore threatened or endangered species to greater numbers and return them to the wild. Advances in sci-



entific technology are welcome and encouraged in this law, not hindered with rigorous paperwork and senseless bureaucracy.

The current Endangered Species Act has been driven not by biology, but instead by the courts and the manipulation of the public participation provisions in the law. For example, the public process to petition a listing of a species requires little scientific data yet requires the Fish and Wildlife Service to undergo extensive analysis to determine whether or not a species should be considered for listing.

In addition, as the spotted owl fiasco makes clear, frivolous lawsuits have contributed not to the conservation of endangered species, but instead to the economic and social upheaval of our rural communities.

The bill encourages public participation but in a more positive constructive manner than the current law. It makes all scientific data available to the public. It requires that people who petition to list a species provide more thorough and concise scientific information in order for that species to be considered for listing.

It also limits citizen suits to actions against Federal agencies and eliminates other abuses. Finally, this bill encourages states to be more actively involved in endangered species conservation by giving them incentives to implement this program.

The bill also establishes a National Biodiversity Reserve System consisting of over 290 million acres of land for the purpose of protecting biodiversity and our natural resource heritage. A proactive program, the biodiversity reserve system will utilize conservation lands to foster biodiversity and conserve endangered species. Lands can be added to the system by exchanging properties with non-Federal landowners. This is a positive shift from the current conservation practice in those areas.

I realize that this bill is not perfect. It does, however, represent a dramatic and fundamental reform of the existing law by recognizing that the key to reforming the threatened or endangered species is through incentives and rewards, not threats and fines. Rewarding people for species conservation and good land stewardship is the key to strengthening the ESA. It is just that simple.

Thank you again to the Chairman for scheduling this hearing today and with unanimous consent, I would like to include statements from the field hearings, the task force field hearings, in the record. And I would like at this time to recognize the ranking minority member on the task force, Mr. Studds.

[Excerpts from previous testimony may be found at end of hearing.]

**STATEMENT OF HON. GERRY E. STUDDS, A U.S.  
REPRESENTATIVE FROM MASSACHUSETTS**

Mr. STUDDS. Thank you, Mr. Chairman. My statement will be much briefer than yours and you may also notice some other differences. I would very much have liked to come here today to say that the bill before us represented a genuine effort to reform the Endangered Species Act. I cannot say that.

I wish I could say this committee had undertaken something resembling an honest review of the statute but I do not believe that it has. I had hoped that proceedings might value science over anecdotal

dote, that we could all concede that matters as important and complex as this Act have shades of gray, or at the very least, we could show common respect to witnesses who actually might have differing views. Sadly, we did not.

I think members know that I am not given to shrill accusation. And given my decades-long friendship with the gentleman from Alaska, and our remarkable history of working cooperatively to reconcile our sometimes very considerable differences, I searched this bill for redeeming qualities and I could not find them.

As we convene this hearing, let us at least be clear about our intentions. This legislation constitutes, in substance, an outright repeal of the Endangered Species Act. If the subtext of the debate pits science against politics, then we now know who wins.

The bill barely gives lip service to the overwhelming weight of testimony from respected scientists. Rather, it validates uncritically the pseudoscience purchased and packaged for us by special interests, which are aching to resume timbering on salmon streams and, believe it or not, to require the United States government to seek permission from the likes of Muammar Khadhafi to protect threatened gazelles.

We set out to heal an admittedly ailing Endangered Species Act. Instead, this bill amputates its key provisions and then decapitates it. I am saddened to have to conclude that the results of our work over the past many months are as discouraging as the way in which we conducted that work. And I emphasize the word saddened.

We have a long tradition in this institution of bipartisan fashion of approaching this matter. This bill, as I recall, was signed into law by President Nixon with huge bipartisan majorities in both houses. That kind of comity, that kind of reflection of a broad bipartisan understanding in this country and an appreciation of the basic premises which underlie this statute has now fled the scene, and I hope we do not have to wait too long for its return. Thank you, Mr. Chairman.

Mr. SAXTON. May I proceed with an opening statement?

Mr. POMBO. Without objection.

#### STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. SAXTON. Thank you. I will try and do this quickly. If I may ask unanimous consent also that my entire statement be placed in the record, then I won't have to take quite as long. Mr. Chairman, first of all, let me thank you for giving us the opportunity to express ourselves this morning, and let me commend you for the great effort that you have put into this issue over the past several months.

I know that you have traveled and listened and hopefully learned and to the extent that you have done that, I think you deserve a great deal of credit. As you know, Mr. Chairman, I have a strong interest in the conservation of endangered species. As such, I have, as you know, informed both you and Mr. Young I will be offering a measure to improve the implementation of the Endangered Species Act in the next few days.

I have some concerns about the bill that you have drafted. For example, its definition of take which defines it as a direct action which harms or kills an endangered species I believe is wrong directed. I believe that habitat protection is important for many, in fact for most, species. I realize that other factors such as predation can also lead to decline of species but habitat modification also plays a major role in species decline and we as a committee cannot ignore that.

A major criticism of the current Endangered Species Act as it exists in law is that the Federal Government has too strong a role in its implementation and shuts the states out of the recovery planning process. Many states have strong endangered species conservation programs in their own right. To shut this expertise out of the recovery planning process is seen as many as quite unwise.

I intend to introduce the Endangered Species Habitat Conservation Act of 1995 to address this problem. My bill would, at the Governor's request, require the Secretary to delegate the authority to develop and implement recovery plans to the states. While the Secretary would retain authority over the overall conservation of a species, the bill puts in place checks and balances that give the states power to negotiate if the Secretary rejects the state-delegated recovery plan.

For example, if the state of New Jersey, which is my home state, develops a plan to conserve and manage the Pinelands tree frog, which the Secretary rejects because he or she does not believe it will adequately protect the species, an ad hoc panel of scientific experts would be convened. This group, called the Joint Federal-State Panel, would be comprised of two state-appointed scientists with expertise in the species, two federally-appointed scientists with expertise in the species, and a scientist recommended by the President of the National Academy of Sciences with similar expertise.

This panel would be charged with working out the differences between the Secretary's vision of conservation and the state's. The resultant recovery plan would be a scientifically and not politically based plan. My bill does not ignore economic considerations either. It requires the Secretary to minimize and fairly distribute adverse social and economic consequences that may result from implementation of recovery plans.

It also sets up specific content requirements for petitions to list, so that only those that are scientifically based will be considered by the Fish and Wildlife Service. Further, it requires peer review prior to final approval of a listing, if the Secretary is requested to do so by a person with legitimate scientific concern. Finally, it lets stand the Supreme Court definition of harm to include habitat modification.

I am concerned about the takings section of the bill as I had mentioned earlier and I look forward to working with you and with Chairman Young to address this issue. Mr. Chairman, once again thank you for the opportunity to discuss this issue this morning. Thank you very much.

[Statement of Hon. Jim Saxton follows:]

## STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, thank you for holding this hearing on the reauthorization of the Endangered Species Act, and most particularly on your bill, H.R. 2275. As many of you know, I have a strong interest in the conservation of endangered species. As such, I have informed Chairmen Young and Pombo of my intention to introduce two separate measures to improve the implementation of the Endangered Species Act.

One of the criticisms we hear of the Act is the lack of incentives for private landowners to conserve a species or its habitat. When landowners believe that the presence of endangered species habitat will interfere with land use, it creates a disincentive for them to preserve that habitat. I will be introducing a bill that uses the tax code to encourage landowners to enhance sensitive habitat to attract the very species they would normally want to discourage.

The first component of the bill is estate tax reform whereby landowners can receive tax relief for land set-asides. It allows landowners to defer estate taxes for as long as they set aside land to conserve threatened or endangered species. The second component in the incentive bill is a tax credit to support activities to conserve species. This is broken out as follows:

(1) An individual landowner will receive a specific tax credit for entering into a voluntary agreement with the Department of Interior specifying what activities must be undertaken to conserve a species; or

(2) The Fish and Wildlife Service would compile a list of geographically limited activities that landowners in that area can undertake to help conserve a species. For example, in a geographic area where an endangered species is known to exist, if landowners plant trees that encourage nesting of that endangered species, they would receive a tax credit.

I intend to introduce this bill as soon as I receive a cost estimate from the Joint Committee on Taxes.

Another criticism of the Endangered Species Act is that the Federal Government has too strong a role in its implementation, which shuts the States out of the recovery planning process. Many States have strong endangered species conservation programs in their own right. To shut this expertise out of the recovery planning process is seen by many as arrogant.

The second measure I intend to introduce, the Endangered Species Habitat Conservation Act of 1995, would address this problem. My bill would, at a Governor's request, require the Secretary to delegate the authority to develop and implement recovery plans to a State. While the Secretary would retain authority over the overall conservation of a species, the bill puts in place checks and balances that give a State power to negotiate if the Secretary rejects a State-delegated recovery plan.

For example, if the State of New Jersey develops a plan to conserve and manage the Pinelands tree frog, which the Secretary rejects because he or she does not believe it will adequately protect the species, an ad hoc panel of scientific experts would be convened. This group, called the Joint Federal-State Panel, would be comprised of two State-appointed scientists with expertise in the species, two Federally-appointed scientists with expertise in the species, and a scientist appointed by the President of the National Academy of Sciences with similar expertise. This panel would be charged with working out the differences between the Secretary's vision of conservation and the State's. The resultant recovery plan would be scientifically and not politically based.

My bill does not ignore economic considerations. It requires the Secretary to minimize and fairly distribute adverse social and economic consequence that may result from implementation of recovery plans. It also sets up specific content requirements for petitions to list, so that only those that are scientifically based will be considered by the Fish and Wildlife Service. Further, it requires peer review prior to final approval of a listing, if the Secretary is requested to do so by a person with legitimate scientific concern. Finally, it lets stand the Supreme Court definition of "harm" to include habitat modification.

I have concerns with the Young/Pombo bill and its definition of "take" which defines it as a direct action which harms or kills an endangered species. My constituents believe—and I agree—that habitat protection is important for many—though not all—species. I realize that other factors, such as predation, can lead to the decline of a species. But habitat modification also plays a role in species decline, and we as a Committee cannot ignore that.

I am also concerned about the takings section of the bill and intend to discuss this section with Chairmen Young and Pombo after I have had the opportunity to hear today's witnesses.

Mr. Chairman, thanks again for the opportunity to discuss the Endangered Species Act. I look forward to working with you on making this reauthorization of the Act as painless for all involved as possible—including the critics.

Mr. POMBO. Thank you. The committee will temporarily recess. We have a vote going on right now. We have about seven minutes left in the vote and we will return promptly after that and resume the hearing.

[Recess.]

Mr. POMBO. The hearing will come back to order. I would like to apologize to everybody but we are going to try to avoid as many of the interruptions as possible with the floor but they are calling votes on stuff that really doesn't matter so we have to go over and vote once in a while.

We are pleased today—before we proceed, I would like to say we are pleased today to have several honored guests in our audience who I would like to take one moment to welcome. They are here today because the action that we will take on the Endangered Species Act has enormous consequences for the people and the wildlife of their countries.

His Excellency Ambassador Midsi of Zimbabwe; His Excellency Ambassador Colomo of Namibia; representing His Excellency Ambassador Chakoni, who could not attend, is the First Secretary, Mr. Kumatira; and Mr. Mustogmarod, the charge d'affaires of Botswana. And if they wouldn't mind standing for a moment, welcome to our hearing. We thank you very much for your attendance and your interest in this issue.

Mr. RADANOVICH. Mr. Chairman, is Namibia near Tracey?

Mr. POMBO. Kind of. It is about as close to Tracey as it is Fresno. Yes, Mr. Tauzin.

Mr. TAUZIN. Mr. Chairman, I ask unanimous consent to make a brief opening statement.

Mr. POMBO. Without objection.

#### STATEMENT OF HON. BILLY TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA

Mr. TAUZIN. Mr. Chairman, I simply want before we begin the hearings to point out a very interesting distinction in the way in which people approach this extraordinarily complex and controversial issue of reforming the Endangered Species Act. In the last several Congresses, Jack Fields and I introduced endangered species reform. It immediately was characterized by opponents as the blueprint for extinction, I think is the term they used for the bill.

And as a result an alternative bill was filed by the then chairman of Merchant Marine Fisheries Committee, Mr. Studds, also reforming the endangered species bill. In his bill, five of the six general principles outlined in the Tauzin/Fields bill were incorporated in some form. The only one where there was a huge difference of opinion was in the sixth which was a property rights section.

And yet for all those years we never had a markup of either one of those two bills. We had hearings; we had sessions like this; we had field hearings on some occasions, but we never had a markup. The process never evolved into action by the Congress. And so today in a new Congress we are taking it up again. And not sur-

prisingly there is a huge difference not only in people's appreciation of the issue but in the way they approach this debate.

Already we have seen debate by characterization. I want to paraphrase my friend from Massachusetts' statement. He called the bill not genuine, not honest, driven by anecdote, no redeeming qualities, amounts to repeal, represents the victory of politics over science, puts Khadhafi in charge of protecting giraffes, I think he said. It amputates, decapitates all debate by characterization.

I want to contrast with the statement made by Mr. Saxton who has very substantial differences with the bill that we have prepared and filed and which we are hearing today. Mr. Saxton talked about his difference of opinion on the definition of take, his difference of approach on the question of state control of the programs and conservation habitats, all legitimate differences of opinion that we ought to debate and settle and eventually work out.

I draw this distinction to the attention of the committee in the hearing for this simple reason. I would like to make a request upon all of this here in this hearing, in the Congress, and eventually as we debate this with the White House itself, and that is that we end this debate by characterization. I do not disrespect nor am I intolerant of the views of those who feel like the status quo in endangered species is OK. I think they are wrong but I respect their opinion.

I deeply respect those who will disagree with the reforms this bill proposes. I think we are right but we ought to have a good, honest debate about whether the language we have crafted in these reforms does the job or whether it fails to, and if you can prove to us that it doesn't do the job in building a better Endangered Species Act or that in some way will fail us in terms of balancing the needs of people and the ecology, then we ought to be willing to work with you to change it.

But that ought to be the structure of this debate. We ought to end this debate by characterization. I don't care what you call this bill. If you want to call it the blueprint for extinction and publish that in mailings and pamphlets, that is not going to get us anywhere. I don't really care how you characterize it. What I care about is whether we collectively join together in reforming an act that desperately needs reform and desperately needs to be made more user-friendly so that people who are affected by it support it more, so that it can do a better job of protecting species and at the same time respecting property rights and people in the equation.

If we can just agree to do that, this debate will be much more pleasant, more productive, more fruitful, and in the end I think the American public will appreciate it more than just name-calling and again debate by characterization. I would like to see it end, and I am calling upon all my colleagues to try to end it.

This is a great debate we start today on this bill. I hope the hearing enlightens us. I hope it tells us where we are right and where we need to change, and in the end I hope we produce a bill that more and more people in America can come to support so that we have a decent program in America that works, is common sense, and takes people and the ecology into account in a way that gives us both a chance to survive in this ever-changing planet. Thank you, Mr. Chairman.

Mr. MILLER. Mr. Chairman, I ask unanimous consent for opening statement.

Mr. POMBO. Without objection.

**STATEMENT OF HON. GEORGE MILLER, A U.S.  
REPRESENTATIVE FROM CALIFORNIA**

Mr. MILLER. Mr. Chairman, I do so simply not to defend my colleague from Massachusetts who is among the most thoughtful and articulate members of this body and has been for the entire time I have been in this body, but we must and we will arrive at conclusions as we read the various proposals of what will be before us, and in so doing in arriving at those conclusions, we will characterize and we will properly characterize our conclusions as they pertain to the bill and to amendments that will be offered and to the final work product.

And I think it is a very fair characterization when you look at how the bill that will be before this committee treats habitat, how it treats compensation, how it treats the definitions of species, and how it places limitations on various species, foreign, marine, what have you, that you can arrive at a very fair characterization that this is the repeal of the Endangered Species Act as people have come to know it and have expected the benefits of that Act and have received the benefits of that Act. That is a very fair characterization.

To say that this amputates major provisions and protections and goals and purposes of the Endangered Species Act is a very fair characterization. I assume many in this room will not agree with that and won't ever agree with that, and I don't know that one side will be able to prove to the other to the extent of changing their mind but that is a characterization that can be properly arrived at.

And you can't in the course of discourse eliminate characterizations. We have had many people who are proponents of this legislation time and again sit at the witness table or testify in this committee that they are against repeal. That is sort of the chump change that you throw out on the table so that nobody can attack you and then engage in the process of repealing the Endangered Species Act as it is currently known to the American people and as they have watched it work and they continue to overwhelmingly support that Act. That is not the proposal before us.

And we will continue down this road, and there will be changes, I assume, in this legislation. There will be alternatives offered, and at some point you will decide that that may be the status quo or that may be radical extreme environmentalism. You will make your decisions and your conclusions but we simply will not—we have no ability to deny people to articulate their conclusions after reading the proposed legislation and as amendments are offered.

And I think it is very fair to say that this is the repeal of the Endangered Species Act. This is a much different approach. Whether or not it will protect the species, we will start to hear from today and this committee will have to decide, and again people will have to—I do not believe that it will.

I think there are such huge inconsistencies in this legislation between the protection of species and how you would achieve it that it is impossible to believe that this legislation leads you to the con-

clusion that this legislation could wear the mantle of the Endangered Species Act as it is commonly known in the United States of America and as it has been embraced by the American public. Thank you very much, Mr. Chairman.

Mr. POMBO. Yes, Mr. Vento.

Mr. VENTO. Mr. Chairman, I have an opening statement. I ask unanimous consent to give an opening statement.

Mr. POMBO. Without objection.

**STATEMENT OF HON. BRUCE F. VENTO, A U.S.  
REPRESENTATIVE FROM MINNESOTA**

Mr. VENTO. Well, Mr. Chairman, I am obviously very concerned about the direction that has been put forth in the measure, H.R. 2275, and that is going to be testified on today by the administration and other witnesses. Earlier this year I enlisted 130 sponsors on a bipartisan basis in signing a letter to Chairman Young and ranking member Miller concerning the Endangered Species Act.

The Endangered Species Act has been a success and it has been a great success. It is one of the strongest environmental and public policy laws concerning conservation. It relates not only within our nation but on an international basis in terms of trying to provide the type of leadership that will in fact preserve biodiversity, which I think all of us should recognize as being enormously important to our future on earth.

The fact is though that this letter put forth in general terms some specific concerns. I am not portraying and would not portray that most of the legislation and laws that we have are perfect. We haven't quite worked ourselves out of a job yet. The fact is that I think the essence of good legislation is to preserve success and what works, and then to modify it so that it can accommodate and deal with some of the problems that have occurred.

We have failed in that and the reauthorization of that has not gone forward because of the polarized views concerning some of the issues. But as I look at the majority mark that has been put forth by yourself, Mr. Chairman, and Chairman Young, I see many problems with it. I feel that it retreats, it steps back, it denies to engage the issues and problems that we have.

For instance, this would cause the Secretary to choose between extinction or prohibiting killing and not preparing a conservation plan. I just think that lends itself to campaigns for the most visible of species while many of the others would be left behind because they cannot attain that type of visibility. I think it invites and enlists politics over the science of what should go on. It eliminates mandatory protection and provides discretion for various individuals when we have state and local government agreements that are required for landowners, so it steps back from that.

Do we have a problem with private property, do we have a problem with state and local governments? Yes. Mr. Chairman, you highlighted as an example the biodiversity reserves. Perhaps you think that that or feel that that is a major element that is going to help. Well, that provides protection for parks, wildlife refuges, wilderness areas, and portions of wild and scenic rivers.

Well, I would suggest that those are probably exactly the areas where there really isn't as much of a problem. I think we can at-



tain success rather easily there but then you lessen protection on other public lands and, of course, provide no protection on private lands as, of course, the current interpretation of law does provide under Supreme Court decisions.

So again it backs up and takes an easy path here but it really isn't coming again. You say we have to pay significant amounts of money. In other words, the taxpayer will have to fork over with the prospect of inappropriate action if money is not forthcoming from taxpayers in terms of protection. I think that the better judgment here in terms of balance is to recognize some responsibility that we all have with regards to property and with regards to our responsibility as citizens.

On the international basis again we step back. I think the United States and many other nations have been leaders in terms of biodiversity, in the importation of various products, perforce the marketplace. We can have a tremendous effect in terms of what has happened and what is happening on other continents and other places where we have, I think, a real concern and interest on an international basis.

Yet this steps back from that and gives veto power, in essence, it is my understanding, to the Nation or the locale that is in essence doing this. Furthermore, of course, it eliminates Endangered Species Act protection for sea turtles, many types of marine mammals, many types of mammals that would be incidental simply to catching in terms of fish, and this I interpret as being the dolphin and the tuna type of thing.

It provides special interest exemptions for shrimpers and oil companies and others in the economic zones, a 200-mile area, and I just think that that is the wrong way to go. We went through a lot of debate and a lot of decisions have been made, and I think it is a recognition on the part of the public generally of the importance of this.

Mr. Chairman, I think that this particular product that is being put forth as a solution is very flawed. I think that there is a strong support in the general public. As a matter of fact, I have been very pleased to find very strong support and interest in this and public perception of endangered species all the way from elementary kids through many parts of our society. There is a big interest in this particular issue, and while I think this is a flawed approach, I hope that when we get done we could have more reasoned approaches prevail.

I have been disappointed with the hearings and the tenor of the hearings and the fact is I wouldn't hold it up as a scientific model. If this is science, I guess we could say that the idea of the Inquisition was good religion, and I think probably that is not the case. So I hope that we can see a change in tenor and work together on the problems that address this.

[Statement of Mr. Fazio follows:]

STATEMENT OF HON. VIC FAZIO, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman, Members of the Subcommittee, I am pleased to provide testimony for the Committee's hearing on H.R. 2275, the Endangered Species Conservation and Management Act of 1995. I am pleased that you are taking the first important steps to review the Endangered Species Act. This process needs to go forward so that meaningful reform of the law can be enacted. These changes need to be based

on real world experiences, because what seems to work on paper doesn't always work when you seek to enforce it.

I commend you for your efforts and, at this time, I would like to suggest a few minor modifications to the proposed legislation that I believe would be of great assistance to water users in my district and others who are being asked by the Federal Government to invest substantial sums of money to modify their operations to protect endangered and threatened species.

Specifically, I strongly believe that the Congress should take action to provide greater certainty to water districts, like the Glenn-Colusa Irrigation District (GCID) in my Congressional district, that are impacted by the ESA and that must make major capital investments to comply with the ESA. I believe this will improve the Act, encourage private parties and local governments to be more aggressive in their efforts to protect species and limit the economic hardships that have resulted in parts of the Sacramento Valley because of ESA-driven restrictions that have been imposed on diversions from the Sacramento River.

In case of GCID, ESA enforcement actions at the District's Hamilton City Pumping Plant have imposed pumping restrictions that have cut the District's ability to use their entitlement to divert water from the Sacramento River by 35 percent. Reductions in deliveries to GCID growers also impact the amount of water that is available to downstream farmers that rely on GCID drain water to irrigate their crops. And, a number of other diverters are seeing their operations curtailed as well in response to various enforcement actions emanating out of the ESA.

It is reasonable, under certain circumstances, to impose restrictions on pumping to protect endangered and threatened species, and it is reasonable to require districts to invest in fishscreens and other fish deterrent technologies to protect these same species. But it is not reasonable to require these districts to make investments in very large capital projects and, at the same time, leave them vulnerable, at any time, to further demands of capital outlays to protect species. What I am looking for is a change in the Act that specifically requires the Secretary to grant these investments some shelf-life, some insulation from the imposition of new, more costly restrictions and improvements to their systems.

We need to provide these districts that kind of certainty in order to be able to finance their share of these investments at a reasonable rate. Certainty of the kind I am talking about is essential to being able to show the private lenders how you are going to pay for these investments.

We need to provide these districts, which are public agencies, with greater certainty because the fact of the matter is that the resource agencies are micro-managing these large capital projects. The resource agencies are the ones that determine, for example, what kind of fish screen is going to be built and where it will be placed. As a result, the resource agencies should take responsibility for their decisions. They should be required to sign on the dotted line, to make a commitment to the selected alternative, and be forced to stick by the results of their decision.

Specifically, my proposed amendment would resolve these concerns by assuring that, as long as a Section 7 permittee is complying with the terms and conditions of a Biological Opinion or a conservation plan, the permittee would not be subject to new or additional requirements under the ESA. This is the same concept employed in the "no surprises" policy for habitat conservation planning adopted by the Clinton Administration and incorporated into H.R. 2275. No surprises is designed to provide landowners certainty that they will not be required to spend more or provide more land for species protection than is reflected in the HCP. This benefits landowners by allowing them to factor these requirements into their long term planning. This amendment provides the same type of certainty for entities facing Section 7 restrictions that is available to landowners who develop HCPs obtain under Section 10.

These are important changes that entities regulated under the Endangered Species Act need in order to justify making substantial investments and sacrifices for benefit of species of fish and wildlife. I respectfully request that this amendment, which is attached, be included in Committee amendments to H.R. 2275.

Thank you for your attention to my concerns and those of my constituents.

Mr. POMBO. I would like to call up the first panel of witnesses. Mr. George Frampton, Assistant Secretary, Fish, Wildlife and Parks, Department of the Interior; Dr. Malan Lindeque, Ministry of Environment & Tourism; Senator Drue Pearce, President, Alaska State Senate. Thank you for joining us and we are using the lights in front of you.

Your opening statement will be limited. Your oral statement will be limited to five minutes. Your entire statement will be included in the record. When you see the yellow light, you have 30 seconds remaining; the red light it is time to quit, and we are going to try to keep it to that if possible. So, Mr. Frampton, you may begin.

**STATEMENT OF GEORGE T. FRAMPTON, JR., ASSISTANT SECRETARY, FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.**

Mr. FRAMPTON. Mr. Chairman, the Endangered Species Act is completely broken and needs a major overall. That is obviously your view and the view of at least some of the co-sponsors of the bill you and Chairman Young have introduced. If it takes a 156-page printed bill to reauthorize this Act, the Administration fundamentally disagrees. We think, and many other people in this country I think, including the scientific community, believe that the Endangered Species Act is a core component of the country's environmental protection program, that it has worked pretty well and had some major successes. There are some things it doesn't do as well as it might for species.

There are definitely some problems in the impact of the Act, potential and actual impact on the regulated public, especially private landowners. These problems can be fixed. We are fixing some of them by trying to administer this Act in the last two and a half years in a very different way, new policies, new regulations. There are other things that need to be done through statutory changes. We have identified most of those things. We can fix the problems with the Act.

My point, Mr. Chairman, is that while there is some disagreement about little bits of fixes and more fixes, I think it is fair to say that those who genuinely want to see this Act survive and want to see it work better—better for the regulated public, better for species—more or less agree there is broad agreement on the areas that need to be addressed and I think it is easy to say what those are.

Insure the use of good science, that is the first postulate of the Republican policy statement on the Endangered Species Act, make sure the listing process works right. We have peer review and a good decisionmaking process. Relief for homeowners and small private landowners. In most cases for most species we don't need their property for recovery of species. With respect to large landowners try to focus on voluntary multi-species agreements because it is that approach that gives them more flexibility and more certainty and is better for the species recovery.

Include states and local governments more than we are doing. Provide for safe harbor and incentive provisions. Better recovery planning which includes better consideration of socioeconomic impacts and more involvement on the part of states and other stakeholders. Those are the things we need to do.

But this bill, Mr. Chairman, does not do those things. In our view, it does not chart a constructive path to reauthorization. Now there have been statements made in the last week that this bill, your bill, Chairman Young's bill, effectively repeals the Endan-

gered Species Act. I don't agree with that at all. The problem with your bill is that it ineffectively repeals the Endangered Species Act.

It creates tremendous opportunities for wheel-spinning. You said you wanted to cut down on paperwork and bureaucracy. This quadruples it. This is a litigating lawyer's dream. As a former litigating lawyer, I can tell you that. You know, it will take decades to resolve some of the inconsistencies in this Act and it doesn't even allow us to try to take steps that we are taking under current law and policy to keep species off the list. It forbids that.

Congressman Tauzin challenged us to be specific. Let me take a minute to be specific. This bill doesn't honor sound science. It repudiates it. The latest National Academy of Sciences report makes it clear that protecting species is about protecting habitat but this bill eliminates private habitat, all private habitat. It shrinks by 70 or 80 or 90 percent the amount of Federal land habitat that can be managed to protect species, and it creates brand new disincentives, perverse incentives, to destroy habitat in the period between the time when a species is listed and a final plan is adopted.

There is no impetus here to do multi-species planning so certainty is reduced. The bill has virtually nothing from the Western Governors Association proposals for partnerships between the states and the Federal Government. It removes the obligation of Federal agencies to try to run their programs to avoid extinction which has been the most successful and efficient part of the Endangered Species Act.

The compensation provisions alone make it very difficult to administer the Act. On the international front, it would allow virtually any poacher or illegal wildlife taker to import into this country but probably prevent U.S. businesses that currently can get permits to export CITES listed products like alligator skins to other countries. And, finally, by disqualifying, taking off the list population-based species, a vote for this bill is a vote to take off the Endangered Species Act the bald eagle, the grizzly bear, the wolf, the California sea otter, the Florida panther, the peregrine falcon, and sea turtles among others.

Now just let me conclude by saying that there have been processes in the last eight months that have been very constructive. The Administration introduced a ten-point plan. You and I, Mr. Chairman, talked to the timber industry executives several months ago. I heard you say that our plan has a lot of good stuff in it with the exception of the small landowner exemption, you didn't like that. I can understand why you wouldn't want to take the Administration's plan but there have been other processes that have also developed good building blocks for constructive reauthorization.

The Western Governors Association has been working for eight months with the international and the state fish and game agencies. We have worked with them. There is a lot of common ground there. We try to find common ground. Governor Rosco, Mark Rosco, from Montana, Mike Levitt from Utah, Republican western governors, they are not environmental extremists. You know, they have told you what the states want but very little of that is in here.

The Keystone Initiative, the National Academy of Sciences, the building blocks for a constructive reform of the Endangered Species Act are out there but we don't think your bill incorporates any of

those constructive building blocks and the plea I would make to you I guess on behalf of the Administration is we need a path to get this done in this Congress. There isn't a constituency in the Congress or the country for repeal. I don't think a bill like this can pass both houses of Congress and get signed by the President.

If all we have is this kind of bill on the one side and the people say let us tighten down the screws, then we have got gridlock. We are not going to move forward. There is no path. We are going to end up two years from now with the existing Endangered Species Act, less money, more problems, and no progress and no reform. That is not where we are coming from.

The Administration wants to support practical centrist reform, fix the problems, improve the Act for species and the regulated public. We have got to find a vehicle to move forward on that. We will support such a vehicle. Thank you, Mr. Chairman.

[Statement of Mr. Frampton may be found at end of hearing.]

Mr. POMBO. I will avoid making a comment at this time and wait until the question and answer period. Dr. Lindeque, you may proceed.

**STATEMENT OF DR. MALAN LINDEQUE, MINISTRY OF ENVIRONMENT & TOURISM, WINDHOEK, NAMIBIA; ACCOMPANIED BY STEVEN KASERE, DEPUTY CHIEF EXECUTIVE, CAMPFIRE, HARARE, ZIMBABWE**

Dr. LINDEQUE. Mr. Chairman, thank you for the opportunity to give evidence at this hearing. I represent the Ministry of Environment & Tourism in Namibia and appear on behalf of a group of southern African nations. Next to me is my colleague, Steven Kasere of Campfire in Zimbabwe, who testified earlier before a Senate committee on the same issues.

We have submitted our detailed views in a written statement that I request to be made part of the record. Also, I would like to present supporting statements from 16 other organizations. I will summarize our views very briefly.

Most of the provisions in H.R. 2275 concern regulatory actions affecting species and persons within the United States. We see it as inappropriate for foreign nations to express an opinion about U.S. domestic matters and I will confine my comments to the issue of foreign species.

The southern African governments are very grateful that the bill contains a number of extremely important and beneficial provisions about the treatment of foreign species under the Endangered Species Act. These provisions about foreign species will help African nations and others to expand wildlife populations and to retain and expand their habitat.

Under the current Act, determinations made by the U.S. Government authority about our species have caused great concern to governments in southern Africa. These concerns have been expressed repeatedly as official protest from us. For example, on the 10th of March the directors of conservation agencies in Botswana, Malawi, Namibia and Zimbabwe wrote to the Chairman of this committee. They expressed their belief that the Act is fundamentally flawed as far as foreign species are concerned and undermines our conservation efforts.

This was followed by a Diplomatic Note from the ambassadors of these countries reiterating this concern. The current Act is not beneficial to conservation in southern Africa as it is based upon a fundamental misunderstanding of the essential conservation problem on our continent. In our region people and wildlife are dependent on the same land. A great diversity of wildlife still occurs outside national parks and it is this wildlife that we are most concerned about.

The most serious conservation problem in Africa is how to maintain this wildlife heritage in the face of increasing demands on land by an essentially poor rural population. We are trying to develop the best possible incentives for people to retain wildlife, and we have to oppose any regulatory method that bestows a competitive disadvantage to wildlife.

Such disadvantages amongst which we have to count barriers to trade and controlled use will lead to their replacement by livestock and crop lands. Our conservation programs also aim to restore the traditional relationship between people and wildlife by transforming wildlife from a liability to an asset. The Act assumes that conservation is best accomplished by strict prohibitions on trade and use of wildlife and this assumption undermines our approach.

Our region has pursued policies which retain the highest possible values on wild species and natural landscapes. Without these values and a competitive contribution from these resources for the development and well-being of our nations, we will not be able to stop the progressive loss of wildlife habitat to other forms of land use.

We are grateful to see important improvements in the proposed bill that would address our concerns. Of special interest in the proposed legislation are provisions directing U.S. authorities to cooperate with and support the conservation strategies of foreign nations. We are fully aware that some U.S. organizations consider that these provisions remove the protection given to foreign species by the United States.

The proposed bill actually provides a mechanism for the implementing authority to assess various options concerning foreign species, to consult with the relevant governments and to establish the type of partnership in conservation that we would all like to see. It is of great importance to us that the Endangered Species Act does not have a counterproductive effect on our domestic conservation programs. We cannot afford to subject our long-term conservation programs to the threat of unilateral action by a foreign agency ostensibly in the interest of protecting our own species.

The proposed bill also contains provisions that aligns the Act with CITES which we applaud. CITES, or the Convention on International Trade in Endangered Species, provides the appropriate framework for international cooperation in controlling the use of and trade in wild species. Of particular importance to us is that CITES has established the necessary expertise and the effective mechanisms for collective decisionmaking.

Perhaps the most serious problem in the past has been the failure of the implementing agency to consult effectively and meaningfully with foreign governments over conservation measures for foreign species. Governmental Wildlife Agencies of Southern Africa, staffed by well-qualified professionals, have their own special

competence in developing wildlife management strategies that are suitable for local conditions, yet under the current Act U.S. officials are put in a position to second guess and overrule strategies which have been proven successful in practice.

The new provisions in the proposed legislation, if enacted, will go a long way toward eliminating the problems that we have had with the way that the existing Act has been applied to foreign species. We urge you to accept the provisions relating to foreign species in the present bill as it stands now and we sincerely hope that these provisions will become part of an amended Endangered Species Act. On behalf of the southern African countries involved and particularly Namibia, my own, I wish to thank this committee for their attention to these problems and their willingness to hear our views. Thank you, sir.

[Statement of Dr. Lindeque may be found at end of hearing.]

Mr. POMBO. Thank you very much, Doctor, and we do appreciate your coming and testifying today.

I know the Chairman of the full committee would love to be here personally to welcome you, Senator, but it is my pleasure to introduce the President of the Alaska State Senate from Anchorage, Alaska, Senator Drue Pearce.

#### STATEMENT OF HON. DRUE PEARCE, A STATE REPRESENTATIVE IN ALASKA

Ms. PEARCE. Thank you very much, Mr. Chairman, and members of the committee. I thank you very much for this opportunity to testify. My testimony today is presented on behalf of both the Alaska State Senate and also the Alaska State House and the people of Alaska.

First, Mr. Chairman, I want to express our sincere appreciation for the dedication and hard work of the Endangered Species Act Task Force which has been chaired by Congressman Pombo. Speaker Phillips and I both had the opportunity to present testimony to the task force. We hope that the Committee on Resources will utilize the records as they proceed with deliberations on H.R. 2275. We did make specific recommendations during that testimony which I will not be repeating today.

I want to make it clear that the Alaska legislature does not advocate the dismantling of the Endangered Species Act. The Act, however, has been effectively used by Federal agencies and extreme environmental organizations as a weapon and not as a tool of conservation. Rigid and revisionary interpretations of the law by the Federal courts have effectively tied the hands of Federal, but most importantly, state agencies.

We do have a few constructive comments we would like to make about some of the new concepts included in the bill before you and the central items that were excluded. First, the definition of species. The Alaska legislature strongly supports your efforts to redefine species under the Act. From our perspective, definition of species and the misinterpretation and implementation of this portion of the law by the Federal agencies is the single biggest problem with the Act.

Although we support the concept of requiring Congressional approval for listing of a population segment, we would strongly rec-

ommend that distinct population segments be dropped from the Act. Second, the consultation process. We agree with the approach to allow non-Federal persons to use the consultation procedures in Section 10. We also strongly recommend that an amendment be considered that would allow states to participate in the Section 7 consultation process.

It is frequently not advantageous for a cooperative agency with concurrent jurisdiction to utilize the process outlined in Section 10. Third, the Federal biological diversity reserves. Mr. Chairman, we have to respectfully oppose the creation of a new system of Federal biological diversity reserves. We urge Congress not to mix biodiversity management with the listing and recovery of endangered species.

Although we do agree that proper implementation of biodiversity concepts and good conservation practices should avoid species listings integrating biodiversity management with the ESA results in a frightening expansion of agency authorities under the ESA. Biodiversity management principles should be debated separately on their own merits and not mixed into this reauthorization.

We are very strongly opposed to yet the creation of yet another overlapping classification for national conservation systems in Alaska. Our state is already blessed with 68 percent of all national park service lands, 85 percent of all Fish and Wildlife Service refuse lands, and 60 percent of all wilderness acreage. When these areas, and the Chairman has told you many times, I will repeat it, totaling almost 130 million acres were created in 1980, Congress established major use exceptions to accommodate traditional Alaskan uses and to provide for compatible development of some natural resources.

Alaskans witness every day the loss of many of these privileges due to the overly restrictive policies of the Federal agencies who seem to totally disregard the needs of Alaskans and the guarantees that were provided to us by Congress. We are concerned that overlaying national park status with wilderness designation coupled with biological diversity reserve status would virtually guarantee the most restrictive management possible at the expense of many Alaskans.

Conservation goals. We strongly applaud the provisions which authorize the selection of an appropriate conservation objective for each listed species. One of the greatest difficulties arising from existing law is the judicially established mandate that each listed species is to be fully recovered regardless of cost or consequences.

Greater role of the states. We concur, I don't think it is surprising, with the importance this committee has placed on elevating the role of the states in the implementation of the Endangered Species Act. We do, however, believe that states should be exempt from the provisions of the Federal Advisory Committee Act pertaining to the ESA and should have a more meaningful role in the listing, delisting, and recovery process.

In conclusion, Mr. Chairman, we would be negligent if we did not formally recognize that there have been some positive changes initiated by Secretary Babbitt toward his agency's implementation of the Endangered Species Act. The problem is, quite frankly, that the Secretary and the Federal agencies have offered many of these rev-



olutionary changes only after Congress and this task force and the public have threatened a major overall of the Act.

Some of the policies adopted by the Secretary should be considered for inclusion in this rewrite of the ESA. We are, however, adamant that Congress should precisely spell out its intent in the revision of the Act. Secretarial actions cannot overcome faulty court interpretations of the Act which have hampered effective implementation of the law.

It is also safe to say that after 20 years of intolerance and indifference toward the public and cooperating state agencies the public, the states, and certainly Alaskans do not trust the Federal agencies to maintain a cooperative attitude in the implementation of the Endangered Species Act.

A true partnership between Federal, state and private landowners is essential. A true Endangered Species Act partnership will never occur unless Congress clearly mandates the conditions and the role of each of the participants in the partnership. Mr. Chairman, I want to thank you again for this opportunity to testify on behalf of the Alaska legislature and all of the Alaskans who we represent.

I have offered to you an honest critique of H.R. 2275 from Alaska's perspective. We hope our suggestions and comments here will prove helpful in your deliberations. We stand ready to assist you in any way we can in this momentous effort. Thank you, sir.

[Statement of Ms. Pearce may be found at end of hearing.]

Mr. POMBO. Thank you very much. It was indeed an honest critique and we appreciate it. The Chair will recognize the ranking minority member in the subcommittee, the gentleman from Massachusetts, Mr. Studds, for questions.

Mr. STUDDS. Thank you, Mr. Chairman. I really don't have questions. What I would like to do, whatever time I have, if I may, if Mr. Frampton, if you would like additional time to elaborate obviously we are coming from roughly the same place in our assessment of the bill before us and in our understanding or our appreciation of where we think we ought to be going. I know that you were rushed. I know that you had far lengthier testimony.

If there are any other specifics with regard to either ways in which you acknowledge that the Act needs some fixing and that you would ask us to direct our attention to or any other observations, friendly or otherwise, that you would like to make, I would be happy to give you some of my time.

Mr. FRAMPTON. Thank you, Congressman Studds. I would just reiterate that the Administration has tried to work closely in a number of these processes which I think have produced pieces of what could hopefully be a practical, centrist reauthorization in this Congress.

We worked very hard with the state fish and wildlife agencies and the Western Governors Association to look at how we involved state and local governments, how we would use legislative changes to try to make—to streamline—the Act and make it easier to do the kinds of things that we are doing in southern California and in the southeast and in the northwest with timber companies and with local governments to do multi-species planning, how we would reshape the Act to make that easier.

We participated in the Keystone Institute process to look at incentives and safe harbor provisions. And we think that there is out there and hope that there will be incorporated in other legislation that is introduced in the near future in both houses provisions that the governors like, the Administration likes, the scientific community likes, the local elected officials like.

There is surprisingly, given the level of heat in the debate about the Endangered Species Act, surprisingly there is a lot of common ground about what needs to be done to fix, to make more effective, this statute, a lot more than I would have predicted and many others, I think, would have predicted two years ago and we found a lot of that common ground. It is out there. It is out there in the WGA bill and the Keystone report and our ten-point plan which I think represents significant proposals for change.

You know, the shape of a bill that can win a very broad consensus support to take this Act forward is out there, and we will support it. We just need to seize the opportunity to do that. The bill we have before us today is far from common ground and we hope that since there is a common interest in trying to move this forward instead of have gridlock that somehow we can—you know, we can come to common ground here in both houses in the next month or so and move something forward that not everybody is going to like and nobody may like entirely but which can win pretty broad support.

It will have some significant changes in the Act. It will have some compromises. It will make it work better for species and a lot better for the regulated public. The shape of that bill is out there if we can find the right vehicle and the right process to move it forward. And there are things in this bill, in the Pombo-Young bill, you know, that are good. I mean the emphasis on trying to structure voluntary agreements with landowners is very important.

The problem is that there are other parts of the bill that disable that. I was looking at the bill from the point of view of whether under this bill we could do what we did this spring with Plum Creek Timber Company, the largest private landowner in Montana. The state, the Forest Service, Fish and Wildlife Service and the county entered into an agreement to manage Plum Creek and state and Forest Service lands for grizzly bears. I mean everybody wins under that agreement.

We could not do that under this bill because a landowner with five acres could threaten a compensation suit and bring that to a halt for five years. So there are good things in this bill but there are other things that would disable the good things. And we need to be careful as we move forward to make fixes that we don't do things that disable other important things.

Mr. STUDDS. I appreciate that. Let me just conclude by observing that around every, and all of us who have been in this business for a while know this, around every issue of substance and consequence there are many voices. There are always very shrill voices and they are easy to hear. What is much more difficult to hear sometimes is the very quiet broad consensus out there of just plain people who genuinely understand and support something.

In this case I fear it is the shrill voices that have been heard and not the voice of the land which I think is very understanding and

I just want to end by commending you and Secretary Babbitt, whom I think, contrary to something which the distinguished senator from Alaska said a moment ago, I hate the word but, proactive. Secretary Babbitt was in my office three years ago even before he was confirmed saying what can we do to get the good science and make this thing work. That is a refreshing and altogether appropriate attitude on the part of the chief steward of this nation's resources and I commend you and him. Thank you, Mr. Chairman.

Mr. TAUZIN. I think the gentleman's time has expired. The Chair now recognizes the gentleman from California.

Mr. POMBO. Thank you. Mr. Frampton, in your opening statement you said—before I get to that I got to say I knew no matter what we came up with you were going to oppose it. I knew from the very beginning that we were going to be accused of gutting the Endangered Species Act and regardless of what we did, if we changed one word in it, that the rhetoric was going to be the same.

I made the attempt from the very beginning to work with you and other people in fish and wildlife and in this Administration to come up with ideas and ways to do that. About 90 percent of the stuff that you guys brought to me is in the bill and it was ideas that you talk about so eloquently in trying to get private property owners to work to protect habitat and to encourage them to do that instead of always coming down the heavy hand of the Federal Government on them.

Those were the things that we tried to do, the ways that we tried to go about coming up with a balanced approach to protect an endangered species. It was said in one of the opening statements of one of the minority members that this is a new approach and it is a new approach. Everybody likes to go into this debate looking at this issue from inside the box of the current Endangered Species Act.

Everybody is afraid to stick their toe outside of the Endangered Species Act, outside of that box, because they are afraid that they may anger some constituency or anger someone that is out there. Well, no, I think it is time we got outside of the box and looked at a new approach and that is a cooperative management approach, a cooperative agreement between those that are being regulated and the regulators and getting outside of the box that currently exists.

And until you take this from that new approach, we won't see eye to eye on this. You really do have to look at it from outside the box because the current Endangered Species Act, contrary to what has been said here already this morning, is not working. And if anybody took the time to go out and actually talk to the people that are being regulated by this, they would understand why it is not working.

People are destroying habitat so they don't become habitat for an endangered species. People are destroying the ability of wildlife to live on their ranches and on their farms because they are terrified that an endangered species is going to be found on their property and they are going to lose the right to farm or ranch their property. That is the reality of what we are doing.

Now inside the beltway, inside all of these fancy offices back here, we may not realize that but that is what is happening in the real world and until we look at this from a realistic approach we are never going to agree. And we have to get outside the box and look at a new way of approaching that.

In your opening statement you said 70, 80, 90 percent of the Federal land would be left unprotected. Currently 35 to 40 percent of the federally-owned land is held with the conservation easement. It is held within the national parks, it is held within the wilderness areas, it is held within the wild and scenic rivers. Those are the areas that we are looking at to establish biodiversity reserves.

When the conservation biologists came to me I asked them what is the one thing that you really want out of this, what do you want to achieve? They said they wanted to protect biodiversity because they didn't know where it was going to go. They didn't know what all the answers were. The best conservation biologists in the country told me they don't know what the answer is, they don't know what is going to happen.

The one thing we had to do was try to establish a series of biodiversity reserves across the country that could protect that biodiversity. Everybody realizes that it is a futile effort to try to save each and every single subspecies and unique population segment and everything across the country, they know that we will spend money and not be able to do that.

But the reality of it is we have to look at the scarce conservation dollars that we have and try to develop a system of protecting biodiversity of saving wildlife and protecting endangered species. That is what we need to do. That is what this Act is. If you want to come to me with your criticisms of the Act and say if we change this it would work better, if we change this scientific model it would work better, I would be more than happy to work with you and I know that the members on this committee would be happy to work with you to achieve that goal because we want an Act that works. That is what we are trying to do.

And in regard to foreign species, I found this quite ironic that through this entire debate over the past eight months that we have been going through on foreign species, I had a group of wildlife managers from a number of different countries that have come to see me over the past eight months and it was very interesting to hear them talk about the way they felt the United States treated their country, that they didn't care about wildlife, that they didn't care about what was happening with their wildlife in their countries.

And it sounded exactly like one of our hearings out west. It sounded exactly the way that the people in the western United States feel about Washington, D.C. They were saying the same things, that they were being dictated to from inside the beltway from people who really didn't understand what was going on in their country, who really didn't understand that they valued the wildlife in their countries and they were trying to do what they could to protect that wildlife and to put a value on it so that they could achieve their conservation goals.

Those are the kinds of things we want to foster, not just with the western United States but with the rest of the world. If that

doesn't work perfectly, we can work on that language but I am not going to dictate to every country in the world what somebody inside the beltway of Washington thinks it's a good conservation goal. Thank you.

Mr. TAUZIN. Excellent set of questions.

Mr. FRAMPTON. Do I get five minutes or one minute to respond?

Mr. TAUZIN. We actually have to move along. You will get a chance, another question. We have been called to the floor but we are going to go ahead with one more round of questions and I recognize the ranking minority member of the committee, Mr. Miller.

Mr. MILLER. Go ahead and respond on my time and then I will ask you a short question.

Mr. FRAMPTON. Thank you, Congressman. Mr. Pombo, I do honestly think that we have been, we in the Administration have been outside the box for the last two years. We have to administer this Act and it has problems. We have tried to really work a quiet revolution on how we have administered this Act. We have identified things that need to be done through legislative change to take that further. And, as I said, I think there is broad agreement among other people like Western Governors about significant changes that need to be made.

We are not saying this Act doesn't have to be changed. We are not standing on the status quo and we haven't but I don't think that you have an effective reform program by stepping out of the box and then throwing away most of the tools that are in the box. The principal tools of this Act are, first, the obligation on other government agencies to run their programs to try to avoid extinction of species. Very efficient, saves a lot of money. It has been very successful. That is eliminated in your bill. Those agencies don't have to do anything they don't want to do.

The second tool is habitat protection on public lands. We use the public land base in an appropriate way first, more than half, whether it is 60, 70 or 80 percent of that base is removed in your bill. Third, we look to some contribution from private landowners for habitat protection. That is out of your bill. Fourth, we try to structure incentives or remove perverse incentives so that we can have some kind of pressures other than regulation on people to preserve habitats.

There are some real problems with the existing law. This bill in our view exacerbates those perverse incentives. Those are the principal tools that I would argue to you are thrown away and you are left with a very, very small toolbox in this bill. Now briefly on the international front I think it is important that you talk to United States wildlife managers in this country and ask them whether they honestly think that this bill would cripple our involvement in CITES and in international efforts to protect endangered species and I would you that 90 percent of them will tell you that it does.

And I think it is ironic that, you know, six weeks ago Speaker Gingrich went to the Floor of the House to protect our miserable small program for rhinos and tigers, you know, our budget for next year for this Fish and Wildlife Service budget, and this bill guts that program. It lets other countries dictate to us, so ask U.S. wildlife managers what they think of that. That is relevant too, it seems.

Mr. MILLER. Secretary Frampton, let me, if I might, just ask you a question that is I think of concern and certainly the community I represent which is a high growth mainly suburban district, and that is I think if I—while a lot of homebuilders and developers and others are deeply concerned about the Endangered Species Act and its impact on their businesses and the price of their product and all the anecdotal material that we hear, I think if I read them the bill that is before us, they wouldn't agree with the results because there are stronger beliefs about the purpose and the goals of the Endangered Species Act.

One of the things that constantly is brought home is the question of getting some certainty into the Act and getting a resolution of disputes but also getting some resolution of something here in the Congress and I think you are quite right and I think Mr. Studts said it quite correctly that there is a very broad area of common ground out there about the intent and purposes of this Act and trying to make it work better.

One of my concerns is that we will just add to the number of years here in which Congress will not resolve these things that need to be resolved if this bill which apparently you and the Administration have very, very strong objections to, we end up the year with no work product because of a veto or because it was just unacceptable, as I believe it will be eventually, to the Congress and then we are kind of back in the other box of not having this certainty brought to this program.

Mr. FRAMPTON. Well, you know, I just want to say that we are for moving this, we are for reform, we are for moving forward. There are real positive changes that can be made. The Administration is not embarked on some strategy of delay or deception or hoping that nothing happens this year or next year. We would like to see this Act changed, improved, reformed. We would like to get on with it and we need to find a dynamic that allows us to have a vehicle that incorporates a lot of that common ground, otherwise, we are going to end up, as I said, a year and a half or two years from now with the existing Act and we are going to be in a worse situation than we are today.

Mr. POMBO. The committee will stand in recess and we ask our guests to—we have two votes in a row so we will be in recess until after that second vote. I ask members to return as quickly as possible and ask our guests if you can make yourselves comfortable till we get back. Thank you very much.

[Recess.]

Mr. POMBO. We are going to call the hearing back to order and at this time I would like to recognize Mr. Saxton.

Mr. SAXTON. I thank the Chairman for recognizing me. You might be interested to know that on the way back from this last vote Mr. Tauzin and Mr. Pombo and I were walking along together. Mr. Tauzin who is a great mediator recognized that Mr. Pombo and I have some differences and he said why don't you guys get together and settle your differences at which point Richie remarked as long as Saxton agrees with me, there will be no problem. We are closing in.

Let me ask you a question along the same line, Mr. Frampton. During the testimony of the senator from Alaska, my aide brought

this spreadsheet down to you and I am interested in finding some common ground with the Administration and we got to solve this problem. And we put this together primarily to be able at a relatively easy fashion to compare and contrast the different versions.

We have current law, we have Mr. Young's and Mr. Pombo's bill, we have Mr. Gilchrest's bill. He was here just a few minutes ago and has worked exceedingly hard putting together a bill that may be quite similar to mine. And then of course we have my bill. And I might say my bill—I don't take any real pride of authorship but most of my bill—is fashioned after the Western Governors Association version and which I looked at and thought it was quite good and we made some changes.

Anyway, my question is this, how can we find some common ground? I guess this question goes more to process than content at this point because obviously we need to do something. This is a process that we need to all be involved in. I don't think that I have particular pride of authorship. I know that the Administration has ten points and what do you suggest that we do in order to provide some kind of a forum, some kind of a process, where we can get together and end up with an Endangered Species Act that works that we can all live with?

Mr. FRAMPTON. Well, Congressman Saxton, you know, this is your process and I guess all I can say is that we are willing to come to the table anywhere in any way that the committee leadership or committee members, you know, whatever role you want us to play. We would like to be there. I think that, as I understand it, one of your, for example, major components of your bill would, as you described it earlier, would set up a system where we try to make recovery planning more effective by incorporating the so-called critical habitat or similar judgments, put that back into the recovery planning, make it more of a cooperative process where the state wants to take the lead in developing the recovery plan, both in the WGA proposal and in our ten-point plan.

We propose that the Secretary delegate the lead to the state. Ultimately the Secretary would have to approve. There would be a more explicit requirement I guess than current law that socioeconomic impacts be minimized. I mean there is a big area of common ground between the Administration, WGA, and your description of your bill.

I think there are a lot of other areas but we are ready to do whatever you feel would be constructive to try to see if we can't develop a vehicle that the Administration could support or largely support that would be bipartisan and then could actually move to the House Floor and commend a large majority.

Mr. SAXTON. Well, I for one and I know other members from this side are looking for that common ground. I want, and I think I can say that we want, an Endangered Species Act that works. We recognize that there is a very strong role here for the Administration to play during the process of reauthorization as well as after and therefore, you know, I invite you, perhaps maybe we can do it on a staff level.

Maybe a good place to start would be to add whatever your version looks like to this spreadsheet and then we have got five alternative potential plans to look at and we can begin to sort through

the differences and find that commonality that is so important to form a consensus so that we can move forward together. And I would be delighted, Mr. Chairman, to play a role with you in that process. Thank you very much.

Mr. POMBO. Thank you. Mr. Vento.

Mr. VENTO. Mr. Frampton, I was just looking at some of the testimony ahead here and it said—of Mr. Bean. I think it is very insightful that the issue here would be that in order to continue on the successful path toward recovery of the bald eagle, the Secretary under this proposed bill must determine it is in the national interest to do so, seek Congressional concurrence with the determination, and invite 48 governors and nearly 1,500 county governments to nominate representatives to serve on assessment teams.

Appoint an assessment team with potentially in excess of 1,000 members, review the team's assessment, determine a conservation objective for the eagle, and replace the existing successful recovery plans for the eagle with a new conservation plan, all of which must be done in 18 months while simultaneously carrying out similar requirements for several hundred other species.

Did you participate in this with my colleagues in terms of drafting this particular provision?

Mr. FRAMPTON. No, I saw it yesterday for the first time, Congressman Vento. It actually made it more vivid to me what would be required to try to put the eagle, the grizzly bear, the peregrine falcon, the Florida panther and other species that are populations on the list. They are listed as populations but they may be biologically scientifically very important. It would be difficult to put them back on the list.

Mr. VENTO. Well, yeah, that is right in order to keep them on the list. Some would argue that the bald eagle doesn't belong on the list. I don't know but I just think it is sort of vivid, I think, because it does illustrate what you would have to go through or be subject to a challenge, I guess.

There are all kinds of problems. It is my understanding that in the exclusive economic zones, the so-called EECs, that today certain activities take place that have incidental taking occurring there. For instance, with marine mammals that might be on the endangered or threatened list, oil activities, and other types of activities in terms of fishing, netting, and so forth, require certain activities that must take place to avoid incidental taking.

Now it is my understanding that the bill before us simply excuses those activities. In other words, it does not involve—if that occurs then there is no regulation or action that is permitted, is that correct?

Mr. FRAMPTON. Well, I would stand corrected by Chairman Pombo as to his interpretation of the bill. The way I read it is that, I believe it is non-fish marine mammals in that off-shore zone like manatees and whales.

Mr. VENTO. Sea turtles and manatees.

Mr. FRAMPTON. Sea turtles, right. The take provisions are fundamentally removed from the Act so that if you are a manatee or a whale, you know, you better learn to stay more than 200 miles from the shore or you are in trouble. That is the way I read it.

Mr. VENTO. Well, that is the way I read it too but what—



Mr. POMBO. Would you yield just on that?

Mr. VENTO. Yeah, I would just for a moment, yeah.

Mr. POMBO. Are not those animals protected by the Marine Mammal Protection Act that you just named off?

Mr. FRAMPTON. I don't know that they are protected from sea turtles, not at all, but I do know that they are protected from the kinds of effects that we currently try to prevent from oil drilling or motor boats killing manatees, those kinds of things. We wouldn't be able to reach at all under this bill.

Mr. POMBO. In consultation you cannot do that now?

Mr. FRAMPTON. I don't know that the Marine Mammal Protection Act would give us—I just don't know.

Mr. POMBO. I think there are some people who would be very interested if that is your opinion.

Mr. FRAMPTON. If it would give us any authority to deal with boats or oil rigs?

Mr. POMBO. If that is the Administration's opinion I am sure there are some people who would be very interested in that new interpretation.

Mr. FRAMPTON. Well, I am saying I don't—I can't respond to the question of the Marine Mammal Protection Act, what will substitute.

Mr. VENTO. Well, obviously marine mammals don't apply to sea turtles and other types of species that are non-mammals so I mean I don't think that—so that is an important issue. But this is also the interpretation, I might say, of others who are going to be testifying so there will be plenty of opportunity to discuss this.

One of the provisions I noticed that there is, in other words, any animal that is in captive breeding, in other words, restrictions would not be put in place in terms of those captive bred animals abroad. For instance, my understanding is that this legislation would not prevent anyone from importing, for instance, captive bred types of Siberian tigers and so forth that would be brought here for various types of events which would be destructive like a hunting activity. Is that your understanding of this, Mr. Frampton?

Mr. FRAMPTON. That is my understanding. I think the bill relies very heavily on captive breeding, captive propagation in a number of different ways.

Mr. VENTO. I understand that there is maintenance in a zoo rather than in a natural habitat in a provision I read in an interpretation of this bill. That is another thing I think that has to be defended, that there is a lesser reliance on a natural environment.

Most of the time when these captive breeding programs had gone on, I mentioned the peregrine falcon. The condors obviously are another example, the California condor, they are really done in association with maintaining the habitat as well for final release. The objective is to have them occur naturally in the environment or in that ecosystem or that habitat, is that correct?

Mr. FRAMPTON. Well, that is correct. They are a component of a program but you still need the habitat and the National Academy looked at this issue and others have found that it is also a very expensive component but ultimately in the case of turtles, for example, sea turtles, you know, you can grow as many as you want in a pail but at some point you put them in the water and if they are

caught, you are not going to recover the species, so captive propagation alone is ultimately unlikely to be a viable recovery program.

Mr. VENTO. Well, I think one of the other issues, of course, is this international provision where we are supposed to get the permission from any nation whether they are in CITES or whether they are not in CITES in terms of any type of sanctions or any type of actions we take. This would require the President himself to, in fact, make that determination if, in fact, the country did not voluntarily agree. They basically have veto power, taking it out of the hands of the professionals and putting it really in the hands of, for better or for worse, someone that—either a statesman or a politician, take your choice, you know. My time is expired.

Mr. POMBO. Mr. Gilchrest.

Mr. GILCHREST. Thank you very much, Mr. Chairman. Ladies and gentlemen, I appreciate you coming here and giving your testimony to evaluate this most important issue before the House and basically before the American people. I would like to ask the gentleman, I am not sure how to pronounce your name, this gentleman right here. How do you pronounce your name, sir?

Dr. LINDEQUE. Lindeque, Malan Lindeque.

Mr. GILCHREST. Milan.

Mr. LINDEQUE. Lindeque.

Mr. GILCHREST. OK, I am not going to attempt to say it. I can't see it because I need long-range glasses. There has been some mention of the CITES treaty. Could you give us your perspective if the Act is passed the way it is your understanding or your perspective on its impact, what are the ramifications for your country if this bill passes the way it is with some of the language in it dealing with this International Treaty on Endangered Species. Is it a positive effect for the CITES treaty which is positive basically for your country, I would assume, or would this bill have a negative impact on your country as far as species are concerned?

Dr. LINDEQUE. Mr. Chairman, yes. My understanding of the proposed legislation is that it absolutely reinforces the role of CITES as the international forum and mechanism for coordinating and controlling wildlife use and international trade. For our particular country it will certainly make things a lot easier because CITES has a feature which is very attractive to us, namely, it is an open consultative organization where we have a chance to give our views, make our contributions while somehow we do not have that same privilege when it comes to dealing with the Endangered Species Act.

So we would far prefer to handle our international trade issues through CITES rather than the Endangered Species Act. I think certainly from the United States' perspective the proposed legislation also has some beneficial aspects concerning the implementation of CITES. It makes CITES a much stronger force in this country than it is now. Here you presently have a dual system.

Mr. GILCHREST. So I guess what you are trying to say the proposal for dealing with how the U.S. role is with CITES is favorable to you. The proposal before us, H.R. 2275, is something that you would endorse?

Dr. LINDEQUE. Absolutely yes, sir.

Mr. GILCHREST. Mr. Frampton, could you give us your perspective on how this bill would impact the U.S. role with this international agreement, CITES?

Mr. FRAMPTON. Well, what the folks who have participated in the program in the Fish and Wildlife Service and elsewhere for many years say is that they feel this would virtually shut down our effective participation in the CITES program. Just a few examples of specifics, specifics that may be fixable but which I think are in the bill. The bill as I understand it requires that permits be issued for importation of species or animals or parts that were taken as part of a country's conservation strategy regardless of whether that strategy exploits the species or is consistent with other CITES provisions. We have no choice.

A subset of that provision I think is cited also in Mr. Bean's written testimony where he points out that the way the bill is written if you have a permit, if you have ten permits to shoot blackbirds in the last few years, you have free rein, you are entitled to a permit to import pandas into this country and lead them around on a chain.

Mr. GILCHREST. Can I ask to interrupt because I have a couple more questions. The yellow light is on. I will ask unanimous consent to proceed for an additional hour. Anyway, I think there are some distinct differences that we need to take a closer look at. Senator Pearce, you made a comment one of the things you disagreed with in the present bill before us is how they deal with distinct populations.

And I am assuming you are talking about bald eagles, grizzly bears, and things of that nature and is your understanding that if we dealt with distinct populations as it is contained in the bill that then probably Alaska, if you didn't have to deal with bald eagles in Maryland or Massachusetts anymore and since they are not threatened or endangered in Alaska, Alaska would be the last ground that would bear the full burden of trying to protect these species and no one else would have to or no one else—they would not have to.

Ms. PEARCE. Actually, sir, that is not the direct intent of my discussion. I think on animals that you mentioned including brown bears also, eagles, we are not so concerned that Alaska is going to bear the entire burden. However, we are very concerned should distinct population segments of some of our fish stocks and take the chinook, for example, should there be distinct population segments of the chinook, we are concerned that every run, some nature and very, very healthy runs, might be affected so we are concerned that the bill could reach out that far into distinct population segments of the entire chinook fishery. That is our primary concern in the fisheries.

Mr. GILCHREST. An excellent recommendation. Thank you very much. I guess my time has expired. That was a fast five minutes.

Mr. POMBO. Your time has expired. Mr. Cooley.

Mr. COOLEY. Thank you, Mr. Chairman. Mr. Frampton, I want to say to you that this is a good piece of legislation. It puts some common sense back into this law which has definitely been screwed through the 20 some years it has been in effect. It adds a little human element to it and I think it is very well. Nobody in this

committee is going to tell you or that were on the task force to help write this bill that it is absolutely perfect and that is why we are having hearings in order to correct them.

You know, you talked about in your testimony that you are trying to change now some of these things. For 23 years this bill has been in effect. The environmental community has been driving it. You control Congress and you haven't done anything but now all of a sudden you are going to do something. I think that we are taking the initiative and we are going to do something and I think the changes are really well needed.

I want to ask you a direct question and I would like to have an answer. Do you believe in private property?

Mr. FRAMPTON. Yes.

Mr. COOLEY. You believe in private property rights then?

Mr. FRAMPTON. Yes.

Mr. COOLEY. OK. From your testimony I don't think you really believe in private property rights and that has been one of the big bug-a-boos, I think, with most of us from the western part of the United States and your past history which we are all well aware of, those of us in the west, does not set forth that answer you just had.

You know, we talk about the Act and how it has worked and what it has done and we have a lot of proponents sitting in this room today that think this is the greatest thing that ever came down the pike. But, you know, there are so many things in this that really have no scientific background that completely ignore the human factor involved in this process that does not use good science, the best science available, what does that mean, and you know yourself that like in California the prairie shrimp was listed as endangered with merely a 19-cent postcard from some high school student that had done a study about five years prior to that time and that is what it was all based upon.

We looked at that literature over and over. There has been no recovery process and there are no really good science and you talk about the science community. Well, we have people on the other side of the science community that talk about the science community that the environmental people have hired and promoted and there is a big debate on that issue. And you now talk about the Administration's ten-point program. Where is this plan and when was it derived and what is the dating of it and are we all going to have an opportunity to look at that plan and scrutinize that as well as you have scrutinized our bill H.R. 2275?

Mr. FRAMPTON. Yes, Mr. Cooley. It was released in March of this year and I have previously testified here concerning it and we would be happy to send you all of the details behind that later this afternoon.

[The material submitted may be found at end of hearing.]

Mr. COOLEY. OK. Because I would like to look at it myself. I have never had an opportunity to survey that particular bill. I think that we can sit on both sides of the aisle and talk about all the good things that we both want to do. The Endangered Species Act on public property has literally shut down the west and now it is starting to affect private property outside of the west and that is

why we are getting some kind of consideration for how bad this law really is.

Up until the last couple of years we had no support from the eastern part of our country here because nobody really understood how bad the Endangered Species Act was being administered by your agencies and other agencies of the public. Now we find that little places like Texas which has 300,000 acres of in fact impacted law on endangered species of things that you can't even see, snails the size of a head of a pencil, vertebrates that nobody even knew existed before.

We are starting to get some legislators there looking at this and saying to us when we had our hearings, how could you people live with this type of legislation for 20 years? We are finding the same thing in the eastern coast as well. So your protection of private property rights is helping us a great deal. I would like to see every species tomorrow listed as endangered so we could get this on the table and really discuss the merits of this bill and the merits of the previous bills.

I think that it is a time well done and will pass without this Congress in place we would have never addressed this legislation. If we had the other group in power, we would still be living under the 1972 law which was enacted in '73 and I am certainly happy and I know the western part of the United States and you will find other parts of the east are going to be happy to this piece of legislation.

I want to close because I only have a few minutes is that we do not have a perfect bill and nobody is going to try to tell you that it is. That is why we are having hearings to try to tweak out those things that are most contentious in order to bring about some common sense to this process such as the good senator's consideration on the dangers on the sockeye. My state has a tremendous problem with the sockeye on the Columbia River.

We spent \$2 billion and we haven't recovered one single animal, \$2 billion. You are talking about good science. And we paid for every bit of it. I think everybody in this room and the whole United States should help offset the cost of trying to recover the sockeye salmon of the Columbia River but, no, no, no, the way the law is set up we carry the burden of that and the scientists are driving this and it is obvious that they don't know what they are doing because we have been at it for seven years.

So this bill that is presently in place is wrong. This bill as presented, H.R. 2275, will give some consideration of changing some of these that you talked about issues that should have been brought up before. And I think in true bipartisanship here not only from the other side of the aisle but also from the Administration, you should participate in this process and get down to what is really contentious and what we can do to bring back a good Endangered Species Act to protect the species but also consider the human species, consider the economic factors involved in it. Let us put some good science in this and let us all work together.

We never started out a task force with the premise that we were going to destroy the Endangered Species Act. We are trying to make this workable. We are trying to preserve private property rights. We are trying to preserve the species. And what is happen-

ing is that now we are getting ridiculed for what we are trying to do to change a bad law which you already alluded to because you said there are some things wrong with it to make it a better law.

So we need not criticism, we need participation. We need that.

Mr. POMBO. The gentleman's time has expired.

Mr. COOLEY. Thank you very much, Mr. Chairman.

Mr. POMBO. Mr. Farr.

Mr. FARR. Let me share a little different perspective than that of Mr. Cooley. He may be a little bit older than I am but I think I have a lot in experience in the western states as a fifth generation Californian. What I see happening in the time that I have been involved in the public elective office, now 21 years, is an awareness that it is not an issue of ignoring the human factor, it is discovering the fact that the salvation for the human factor depends on the whole health of the planet.

And as we discover what the planet is comprised of, we are discovering a lot of solutions to problems that we didn't have answers to before. I happen to represent a coastal community and the Stanford University has a research center at Hopkins Marine Center, the oldest in the west founded in the last century. It certainly is written up a lot about Steinbeck and that center is now spending more time working with Stanford Hospital to look at the solutions, medical solutions, to problems coming from the floor of the ocean, the marine life.

And essentially they are turning to nature to find those answers. I think that what we are doing is overcorrecting a difficult problem and that is how do we balance, how do we preserve species that may be discovered by future generations to offer solutions to problems as small as they may be and I think that in the process we overcorrect. My district happened to ignore science, happened to even not pay attention to it. They went out and fished sardines, the largest sardine fort in the world, Monterey Bay, and in a year they were gone. People disrupted, canneries closed, all because of a lack of attention to kind of sound resource management.

So I take a different approach than that of Mr. Cooley. I do believe that we learn from these experiences and we need mid-course correction but I don't think it is so broken that it needs the kind of fixing that the bill proposes to do because I don't think the bill bases its content on good science. Mr. Cooley, the interesting thing about good science is that sometimes that good science doesn't look or respect property boundaries. It can't.

We happen to preserve in California the mountain lion. We don't just preserve it on public property. We preserve the habitat of that mountain lion wherever it may be. Does that cause some problems? Yes. Are people thinking that maybe we have too many mountain lions? Yes. But the fact is the voters in California did that, not the politicians.

And I think that there is a desire out there by our citizens of this country that we as stewards of this country, we are not here just to represent people, we are also here to represent all other living things on this planet and to make policy that makes it work well as we grow into a very complex, very large society on this planet, and it is going to tax the resources but the resources are what we live on. We depend on the resources for water; we depend on the

resources for air; we depend on the resources for food; we depend on the resources for micro-climates, and those micro-climates provide the districts that we all represent.

And those micro-climates provide a plant life and a tree life which is all dependent on the animal life, and I think that we need to, as stewards of all this, go very cautiously and make sound decisions based on good science, not just on private property ownership.

Mr. COOLEY. Would the gentleman yield? When we went through the process of writing up this bill and the hearings, we certainly did not anticipate this debate on the bill's structure itself.

Mr. FARR. I did participate in one of the hearings.

Mr. POMBO. Yield back?

Mr. FARR. Yeah, I yield back.

Mr. POMBO. Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman. Ladies and gentlemen, thank you for being here. Mr. Frampton, I do want to say I would not want to ruin your day but there are several things in your testimony I agree with.

Mr. FRAMPTON. Good. That makes my day actually.

Mrs. CHENOWETH. Let me ask you. I saw about a month ago, maybe five weeks ago, on the Tom Brokaw show a piece the news program introduced with and that was a species becomes extinct every 20 seconds. Do you believe that is correct?

Mr. FRAMPTON. I don't know, but certainly species do go extinct and are going extinct all the time as a result of natural causes, particularly in rain forests.

Mrs. CHENOWETH. Very sincerely do you think that we can come together and establish what the public's interest might be in establishing which species we should save? I just don't see an avenue for that. It is still murky out there to me. I know that when the bill was debated originally, we wanted to save the great blue whale and the bald eagle, but—and, you know, there was some direction there that was in the national and public's interest but now it is wide open.

And so it is my hope that we will as a Congress be able to work with you and your agencies to focus in more on what the public interest might be so that we are not trying to save species that go extinct every 20 seconds.

Mr. FRAMPTON. I guess I would respond, Congresswoman, that I think we should continue to have an Endangered Species Act which sets a goal of striving to protect from going extinct all species in the United States, at least strive to protect them from extinction at the hands of human causes. That doesn't mean that we ultimately can hope to achieve that goal. Whether we can achieve that goal depends on, among other things, the status of some of those species, the amount of money that is appropriated for the program, the extent to which we are creative in structuring partnerships, you know, between government and private landowners and some of the tradeoffs that we make between species protection and socio-economic factors.

There are those who say the Endangered Species Act is too absolutist. It does not allow those tradeoffs to be made. I think that is absolutely untrue. There are a lot of elements here in the process that allow those tradeoffs to be made. We may not be able to reach

the goal of striving to protect from extinction all U.S. species from human intervention, but I think we should continue to have an act that sets that goal.

Mrs. CHENOWETH. Mr. Frampton, you indicated that this bill shrinks a habitat on private land extensively and shrinks the habitat by 70 to 80 percent on public land. And I have been with this subcommittee chairman or this task force chairman on all 12 of his hearings, and I know how hard he and his staff have worked, and I think that he truly has gone overboard to reach the—to accommodate the agencies, even to my surprise.

I do want to ask you, do you have the bill in front of you, sir?

Mr. FRAMPTON. I do not.

Mrs. CHENOWETH. You don't. It does indicate that in this bill on page 8 that agencies should promptly pay their owner the agreed upon amount. However, that is subject to the appropriations process. And as I go through the bill, I find that there are many unique and creative ways in which habitat can be preserved, so I guess because I worked with this task force chairman, I am just a little taken aback by the fact that you aren't seeing that. I think he has just gone really overboard in trying to work with you.

I do want to say I don't share your affection for the grizzly bear or the gray wolf. I will continue to work with Mr. Pombo and with your agency on trying to make sure that grizzly bears are not introduced into multiple use areas. I think that makes about as much sense as bringing sharks to the beach or rattlesnakes to Washington, D.C., I mean, the kind that don't have two legs.

But I do want to thank you and your staff for working as you did with Mr. Pombo, and I hope, it is my goal that we can focus on very clearly of what we want to see in the future because I still don't see it. Thank you.

Mr. FRAMPTON. Thank you. Could I just respond to the compensation—

Mr. POMBO. Yeah.

Mr. FRAMPTON [continuing]. question that you asked about? We have different page numbers but one of the things that I think we all need to focus in on is what happens if you put most of the burden of protecting species—if we are going to have an act that really has a genuine goal of protecting species—and then you put most of the burden of doing that on land acquisition because certainly in the Federal budget the money isn't going to be there in the foreseeable future.

Mr. POMBO. It doesn't do that, and to correct you, it does not put most of the burden on land acquisition. It actually puts most of the burden—when you deal with private property, it puts most of the burden on cooperative agreements and voluntary agreements that are entered into where both sides, the private property owner as well as the Federal Government, has the ability to enter into a negotiated agreement as to how or what is the best way to manage the habitat that exists on their property.

The compensation provision or the purchase of habitat, number one, is used as the last resort if an agreement cannot be reached into, and it also puts in a provision that says that we can trade Federal land that is not biologically unique or biologically important or contains a large amount of biodiversity that we can trade



that for private lands which may be biologically unique or biologically important so that we can connect up some of the biodiversity areas to make that work.

So it does not—and, sorry, but I had to jump in, it does not put the burden on the purchase of property. That is the path of last resort when we cannot enter into an agreement that will protect the private property rights of the individual and protect the wildlife that exists on that property.

Mr. FRAMPTON. I guess my point, Mr. Chairman, is that if you reduce the amount of Federal land that can be devoted in any way to species protection and you take private land out all together and you remove the obligation on government agencies to needlessly do things that impact habitat and their programs, it is inevitable that the burden is going to be shifted to purchasing private land and the money is not there for it. That is the point.

Mr. POMBO. All Federal land still remains in protection. It still requires consultation. Even if my bill was adopted exactly as it is written right now, all Federal lands still require consultation, all Federal lands still stay within a protected status for preserving species. It depends a lot more on the agency, on you, and the Administration on what actions you take in terms of protection on Federal lands, so it is a misstatement to say that Federal lands are not going to be used for protection or private lands, for that matter. I'm sorry, Mr. Metcalf, it is your time.

Mr. METCALF. Thank you, Mr. Chairman. My intent here today and over the last many weeks is to preserve endangered species and to preserve a working and effective Endangered Species Act. But whatever we do, we must modify the existing Act to achieve several things, and I am going to list three of them, so that it is to the benefit of the landowner to find an endangered species on the property. Only then will we have the cooperation necessary to preserve and help in the preservation of that species.

The second thing that I am going to mention, there are others, we must have effective incentives to delist recovered species. There is a stellar accomplishment of ESA, stellar accomplishment in western Washington. The bald eagles which were in trouble years ago are now very plentiful in western Washington. They should be delisted, and we should declare victory because it is an achievement of that.

And yet they won't delist because as long as they are listed, they maintain the power of the bureaucracy over people in that area and that is deeply resented. The third thing, we must modify so that sound science is the basis for decisions made in the listing process and in the rehabilitation process for particular species. Sound science and peer review are not part of the process today.

Example, and then I will get to my question for Mr. Frampton. In Washington State a model called the Flush Model is being used by public agencies as a basis for salmon rehabilitation efforts on the Columbia River as required by ESA. It has had absolutely no peer review. Despite months of repeated requests, I have not been able to get the details and a copy of this model.

With the Chairman's assistance, this committee is considering a formal request and perhaps later subpoena if we don't get it. We have to have it for peer review. The whole Columbia River, hun-

dreds of millions of dollars are going to be spent on a model that nobody has seen. I am asking for assistance, and this is my question, Mr. Frampton. Will you use your position to help this committee gain access to this Flush Model on which public policy is based?

Mr. FRAMPTON. I will certainly do so, Congressman Metcalf. You know, I am not familiar with the model. I have heard of it. National Marine Fisheries, of course, and the Commerce Department, not Interior, has the lead responsibility under the Endangered Species Act for—

Mr. METCALF. I have asked—

Mr. FRAMPTON. And I will certainly do my best to inquire why that model has not been available for peer review and get back to you on it.

[The letter received on the above matter may be found at end of hearing.]

Mr. METCALF. Thank you very much. I asked Rolly Schmitt when he was head of the fishery service and he said yes, we will get it, and was unable for whatever reasons not to get it. And I need the weight and prestige of your office again to get that. We can probably get it through a subpoena, but that is sort of an embarrassment to perhaps a lot of people.

Mr. FRAMPTON. Well, I don't know how much weight and prestige it has over Commerce but I will try.

Mr. METCALF. OK, thank you very much.

Mr. TAUZIN. I am sorry, the gentleman was recognized.

Mr. ENSIGN. Thank you, Mr. Chairman. Just to give you a little perspective, I don't—I come at this—I am not a cosponsor of the bill and I am here to learn as much as I possibly can. My background, I am a veterinarian by profession and grew up in northern Nevada at Lake Tahoe in a beautifully serene area and have grown up to really appreciate the environment and animals all of my life.

I do see problems as I am sure that you would agree that there are problems with the current Endangered Species Act, and I think that that is widely recognized. And I think that we do have to take a balanced approach when we look at trying to fix those problems, and I too agree that we need to be good stewards of our planet. Our planet is here for us today to enjoy but it is also here for generations that come after us, and it is important for us to preserve a healthy planet for those generations to come.

In doing so, though, I think we have to ask some fundamental questions when we go about something like an Endangered Species Act, and first of all we have to say should economics play a part? Mr. Frampton, I would start with that question to you.

Mr. FRAMPTON. Absolutely. And I think you have to separate out the listing decision which has always been a scientific judgment under the Act from the second question which is if a species or subspecies or population is listed, then what actions do we take to try to address that problem and recover that species which is the point at which in a number of ways economic, socio and economic trade-offs are taken into account, and we have said—if necessary that should be made more explicit in the Act.

Mr. ENSIGN. More explicit. The reason I bring that up is in southern Nevada we have the desert tortoise and the desert tortoise in southern Nevada is a magnificent creature. As a veterinar-

ian I help many people adopt out these tortoises that have acquired this particular respiratory disease, one of the major reasons for them being listed.

I am not too sure that is great policy considering we don't really know how it is transmitted and all that and whether we are propagating that disease, I am not too sure. But in the Las Vegas valley we have a fee now that every developer, if you are building a house, it goes per acre on how much money you have to pay for a desert tortoise fee, and that doesn't matter.

As a matter of fact, I was involved with a project that was—I was working for my dad for a couple of years, and we built a hotel on a parking lot and we had to pay the desert tortoise study fee and have the desert tortoise study done on the parking lot. And, you know, as a veterinarian I did have quite a bit of expertise, and I probably could have told them that there weren't any desert tortoises living out there on the parking lot but it didn't matter. It was law, you had to do it, and that is just the way it was.

In the southern Nevada area we have now a desert tortoise hotel situation set up to where each one of these species that is relocated, it costs \$8,000 per tortoise to relocate. The reason I asked the whole question about economics is that if you look at—you drive across Nevada, you drive from Las Vegas to southern California, it is a big desert. I mean a very, very, very big desert that is very good habitat for the desert tortoises.

As a matter of fact, there are better places for the desert tortoise that don't have current desert tortoises living in that has the vegetation that is necessary that could be much more cheaply—you know, these tortoises relocated. And I don't think economic factors sometimes are taken into account enough because we don't do enough in our country, I don't believe—the number one cause of early death in our country for people, you know, we talk about trying to save some of these things for scientific reasons for humans because we want to extend their life and have better quality of life, well, the number one cause of low quality life but also shortness of life in America is poverty.

There is no question about it. Statistically it by far leads all other causes of early death in America is poverty. I mean, it outranks cigarette smoking, it outranks accidents and outranks anything. So when we are looking at those types of things, I mean, if we truly care about people as well, I think we more and more have to take into account what we are doing with the millions of dollars sometimes we do spend.

And I was glad to see the listing. I would agree that from a scientific perspective list an animal. From an economic perspective, let's take into account some of the other factors and how much money are we going to end up spending because I agree with the statement that you made earlier about species are going extinct all the time.

But from the time of creation forward basically species have gone extinct, a much more rapid fashion at this point and a lot of that due to the factors that man has introduced. So we need to look at the bigger picture, I believe, and take a really balanced approach, take ecosystems into play. And, you know, I am going to be inter-

ested in learning much more about this whole revision of the Endangered Species Act.

I would appreciate if you could get to my office also the proposal that you had last May, was it, and in as simple language as somebody who is not a lawyer can understand that I could read and see where you have problems, maybe even an analysis of where you have problems with this bill. I would appreciate it. I am trying to get as much, once again, balanced information as I can from both sides on this because the old saying is there are three sides to every story, one side, the other side, and the truth somewhere in between, so I would appreciate that. Thank you.

Mr. FRAMPTON. I will get a copy. I wouldn't disagree with you that there has certainly been conflicts about whether and how much to take economic impacts into account in recovery planning but I do think that the Clark County, Las Vegas area is an example of how that was done and has been done well with a partnership between county government and the Federal agency for that conservation.

Mr. ENSIGN. The people of southern Nevada would not agree that it has been done well. The majority of the people there would not, including local and county governments.

Mr. FRAMPTON. County government, we reached a partnership with county government. Whether members of the county government feel good or don't feel good about that, the net result of the plan is that a lot of potential tortoise habitat, I believe, is open up to development, other habitat is protected. And I don't know whether the \$8,000 figure for translocation is correct, but my understanding is that that is a relatively short-term.

The long-term is here is what you can develop, here is what you can't, let's do that up front, and then the Federal Government basically gets out of your way for 25 years or more. That has been the result of the adoption of the habitat conservation plan for Clark County.

Mr. POMBO. Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. I apologize, I have been out of the room, but I have been in the back of the room and I heard, I believe, Mr. Frampton, it was your testimony. If not, I am going to throw this question open to everybody. And it was basically speculation that running an Endangered Species Act which requires for its main thrust the acquisition of land is not going to work. That at least is what I thought I read out of the testimony and statement and I heard Mr. Pombo say that is not what is being discussed.

I want to ask each of you candidly to put aside kind of the armor that you came here with and tell me whether or not you think the current atmosphere created by the Act as it is now written has created a climate between landowners, and I want to talk about private property here, between landowners, regulators and concerned citizens. And within concerned citizens I am including people who are deeply concerned about the environment. Do you think the current Act has created a climate which serves the purpose of protecting species very well, and, if so, why; and, if not, what do you think we can do about it?

Mr. FRAMPTON. Well, I will take that first if I might. I think that it is true that in some places in some parts of the country that the Act at least as it has been administered in the past has provoked conflict which does not in the long run serve the larger goal of protecting species because you have to have some public support for carrying out these programs.

And I think that it has been a major priority of this Administration, this Department, to see how we could redesign policies and regulations and approaches to the Act so that we could still effectively protect habitat and yet do it in a way that would build public support and be more effective.

Mr. SHADEGG. I appreciate your candor. Are there others that want to comment?

Mr. FRAMPTON. Some places we have been successful, some places we haven't.

Mr. SHADEGG. Are there others that would like to comment on that question?

Ms. PEARCE. I would like to on behalf of the state of Alaska. First of all, unfortunately only 1 percent of the land in the state of Alaska is in private hands so any answer that I give is also going to have to affect public lands. I would say that in Alaska we have found the ongoing discussions of the Endangered Species Act to be very divisive. We also have found that inside-the-beltway decisions do not translate very well to our rather unique and also very large state.

But most importantly we have found that there has been a use of the present Endangered Species Act to affirm and get to other decisions, whether it is the closure of logging in the Tongass, which is something that we have just been fighting through in the past year, or other designations that have been made previously in order to get to some other closure to Alaskans of some activity. I have found that the atmosphere of the entire Act has been divisive and certainly negative to Alaskans.

Mr. SHADEGG. Other—yes, sir.

Dr. LINDEQUE. Mr. Chairman, I think it must be quite clear that this Act on the international scene has certainly led to great divisions, unfortunate divisions. And we felt that such great progress has been made in another forum where similar divisions existed such as CITES, but somehow here it has not happened.

We are intrigued by the very interesting parallels between what is happening here in the U.S. and in our situation. Ultimately it is all about land, and in our experience there is a limit to what you can achieve through regulatory mechanisms. How people view land and resources is the key; at some stage you must get their cooperation. It must come from within, and that is achieved only through consultation and listening very, very carefully to their needs and their requirements as well.

And that to some extent has been absent in the way that the foreign species have been dealt with in the Endangered Species Act, and if I may comment, maybe also in the domestic situation here in the U.S.

Mr. KASERE. Yes, thank you, Mr. Chairman. In fact, we are quite concerned because in southern Africa we have taken serious initiatives to try and balance development and conservation. And such

steps have proved to be quite successful on our part because we are quite realistic with our situation where we are seriously underdeveloped, and even the people that we deal with do not have that kind of understanding of what we mean by endangered species.

But being the leaders of ourselves we understand sincerely and understand that there is need for us to conserve those diversities but then we have been pragmatic and embark on programs which are quite conducive to conservation and development. Like my colleague has already said, the issue of land is quite critical, and I am quite amazed that here the Endangered Species Act is not doing adequately to address the issues yet. But what about countries which are far away in Africa which have to deal every day with wildlife which destroy their crops?

I think the issue of economics must be seriously taken care of and not just economics in the sense of developed countries but economics in the sense of those countries who are just struggling to make ends meet because what you define as economics here is probably something much more comfortable than what we describe as economics in our developing countries.

So we have taken serious initiatives, and we feel that the Endangered Species Act should take serious cognizance of those kinds of activities that we are doing rather than taking us as passengers in the system where you will expect us in the end to look after those species. We will find ourselves in a quagmire or in a difficult situation where we will join other countries in Africa which have destroyed their species, and they are now comfortable. They are not even here in Washington because they do not have elephants, they do not have tigers to destroy their crops.

And what will happen is in the future we may simply be comfortable and destroy our resources which we dearly love simply because we have ignored our economic interests. We want to conserve those species rights. Still you must strike a balance between development and conservation. Thank you, Mr. Chairman.

Mr. SHADEGG. Mr. Chairman, I know my time has expired. Let me make a quick statement. First of all, I have found that at least in Arizona the current Endangered Species Act has not created the right climate, particularly with regard to private property, and when you talk about Alaska, Arizona probably I think second to Alaska has the most public lands. I am just going to throw this last point out there.

I wonder if in fact we shouldn't be looking at writing two different laws or laws with starkly different rules for private property and for public property. I think a case can be made quite differently for what we can and should do on those lands which are owned by the people and those lands which are owned by private interest. I just in my own experience find where we have created a dramatically adversarial relationship between the owners of private property where the vast majority, I think, of these species are and the regulators, we are not achieving the goal. Thank you, Mr. Chairman.

Mr. POMBO. Thank you. Mr. Tauzin.

Mr. TAUZIN. Thank you, Mr. Chairman. Mr. Frampton, I have just reexamined the bill very carefully, and I need your help here. The bill says that except when the government seeks to regulate

property in a way that diminishes its value more than 20 percent and refuses to compensate the landowner, that except for that case it has the full opportunities to take agency actions under this Act on Federal and private land.

Where in the bill do you base your claim that the bill exempts 90 percent of Federal lands and all of private property from protection? Can you cite me in the bill where that is?

Mr. FRAMPTON. Yeah, as I understand it, the bill creates a system in which endangered species protection is primarily, if not virtually exclusively, relegated to existing areas like parks, national parks, and wilderness areas—

Mr. TAUZIN. That is not true. Well, show me in the bill where it says that.

Mr. FRAMPTON [continuing]. in which—

Mr. TAUZIN. Mr. Frampton, I have a limited amount of time, sir. Where in the bill does it say that endangered species protection is now limited to certain parks and wilderness areas? If you are going to cite to me the biological diversity reserves that's a special section on biological diversity enhancement. It does not in any way limit the Federal Government's responsibilities or obligations under the Act to protect species on other Federal lands or private properties.

Mr. FRAMPTON. I had the provision a moment ago, Congressman, but I believe there is a provision that specifically prohibits the Secretary from taking any action to protect biological diversity on areas outside of the reserves unless he certifies through a process by publication in the **Federal Register**—

Mr. TAUZIN. Let me try again. There are two sections—I am limited in time. There are two sections of the law here. The added section is this biological reserve section. It does not limit the capacity of the Secretary to enforce the main body of the bill which is the protection of endangered species and species conservation recovery plans and everything else under the main body of the bill. Biological reserve protection is a special section.

I have to pass on that quickly. I just want to point out to you that if that is the basis upon which you say that 90 percent of Federal lands are exempted or that all private property is exempted, you are dead wrong and you need to go back and read the bill. If there is a misinterpretation of language, we can straighten that out for you real quickly, I think.

Secondly, you criticize very heavily the compensation provisions of the bill and yet you answered earlier that you support private property in America. I have a letter from the President saying he believes in private property too, but he doesn't like our compensation provision. Do you believe the Federal Government has a right under endangered species or wetlands or other such environmental protection measures, to take people's property without paying them for it in order to make it a habitat-protected area?

Mr. FRAMPTON. No.

Mr. TAUZIN. Do you believe that the government has to take away 80, 90 percent of their rights on property before they have a right to be compensated?

Mr. FRAMPTON. I believe the Supreme Court has defined what a taking means.

Mr. TAUZIN. Well, what do you believe?

Mr. FRAMPTON. I agree with what the President said to you.

Mr. TAUZIN. I am asking you, Mr. Frampton, what do you believe? Do you believe that the government has a right to take 60, 70, 80 percent of a person's property rights away without paying them?

Mr. FRAMPTON. The Constitution and the courts have defined what is a taking that is required to be compensated.

Mr. TAUZIN. Oh, it is still going on. The courts have never yet—the Court of Appeals have talked about partial takings, the Supreme Court has not ruled on it yet. I am asking for your opinion, sir. Forget the courts for a second, what is Mr. Frampton's opinion about whether or not a person should be able to lose 60, 70 percent of their property to the government by regulation and not be compensated, is that OK in your frame of legal reference?

Mr. FRAMPTON. In my personal frame and in the frame of a capacity in which I am here as a witness for the Administration, I think that the provisions in the Constitution as interpreted by the courts are provisions which are ample and we will comply with in terms of compensation for taking.

Mr. TAUZIN. So we should have no provisions—

Mr. FRAMPTON. That doesn't mean that we should have no provisions—

Mr. TAUZIN. What provision would you like to see in this bill on compensation?

Mr. FRAMPTON. The question I thought you were going to ask me is what provisions to help protect private landowners and we proposed a number—

Mr. TAUZIN. I am asking you what provision in this bill would you like to see that defines compensation rights so we have that settled for everybody so they don't all have to go to the Supreme Court.

Mr. FRAMPTON. None that go substantially beyond existing law.

Mr. TAUZIN. Where is the law that provides for compensation?

Mr. FRAMPTON. In the Fifth Amendment of the United States Constitution.

Mr. TAUZIN. Right. So you want everybody to go to court?

Mr. FRAMPTON. We would like to see the law complied in the—

Mr. TAUZIN. So if we provide for any compensation provisions in here other than telling everybody you got to go to court and find out what your rights are, you will oppose the bill?

Mr. FRAMPTON. Not necessarily. I don't think that—

Mr. TAUZIN. One final question, my time has run out.

Mr. FRAMPTON [continuing]. We have seen a compensation provision that we think doesn't cripple the law.

Mr. TAUZIN. OK, one final question. You criticize the harm provision. Is it your belief, the Administration's position, that the government can tell a landowner you cannot modify your habitat even if those modifications have zero effect upon the protection of an endangered species on the habitat?

Mr. FRAMPTON. Would you repeat the question?

Mr. TAUZIN. Is it the Administration's position that the endangered species law should give the government the power to tell the landowner that you cannot make any modifications on your land



even where those modifications do not affect the survivability of an endangered species on his property?

Mr. FRAMPTON. Well, when you say affect the survivability of the species, as a whole?

Mr. TAUZIN. That species on his property.

Mr. FRAMPTON. I don't think the current Act—

Mr. TAUZIN. Let me be specific.

Mr. FRAMPTON. As I understand the question, I don't think the current Act gives the Federal Government the right to do that.

Mr. TAUZIN. So you think it is OK for us to—

Mr. FRAMPTON. To regulate habitat conduct that has no impact on a listed species?

Mr. TAUZIN. That has no impact upon the species on that property, it will not harm that species specifically.

Mr. FRAMPTON. You know, I am not sure—I don't think the way you ask the question that the government has any authority to do that under the current Act nor should it under a reauthorized act.

Mr. TAUZIN. Thank you very much.

Mr. POMBO. I thank the panel for their testimony and for answering the questions. The ability to work with this Administration, the state governments, I know Alaska has probably as much to gain or lose out of this as anybody and I appreciate you coming out, Senator, and being here. I recently took a trip to your state and I had the opportunity to spend some time with you there and was truly amazed at what you have in Alaska. It is a beautiful place.

Mr. Frampton, I appreciate the opportunity for you to come testify. I appreciate your answers but I do hope that as we go through this debate that we can have a more factual discussion on the bill and a more factual discussion about what our differences are and try to tame the rhetoric somewhat from both sides but I do hope that in the future that we can have a more factual discussion of the bill and what it actually says. Thank you.

To our foreign visitors thank you very much for agreeing to testify and sharing your insights with us. Thank you very much. The panel is excused. I would like to call up the next panel. Mr. Michael Bean, Mr. Henson Moore, Mr. Bob Irvin, Mr. Bob Stallman, Mr. Rob Gordon, and Mr. Ben Cone. Mr. Bean, if you are ready, you may proceed.

#### STATEMENT OF MICHAEL BEAN, CHAIRMAN, WILDLIFE PROGRAM, ENVIRONMENTAL DEFENSE FUND, WASHINGTON D.C.

Mr. BEAN. Thank you, Mr. Chairman. Let me begin by complimenting you and thanking you for the other bills you introduced the same day you introduced this bill. Those other bills include most particularly a bill to create tax incentives for encouraging conservation on private lands and I think there were some very constructive ideas in those other bills.

As you know, if you have read my testimony, I am a little less charitable toward this bill but I want to honor Mr. Tauzin's admonition to not try to characterize this bill but rather just to describe for you the actual practical consequences of this bill. Let me list a few of those.

First, smugglers of rhino horn, tiger bone and other wildlife contraband will find it much easier to thwart U.S. endangered species laws and the reason for that is because of a provision in this bill which requires the Fish and Wildlife Service to return to those smugglers any products that are not identified as to species within 30 days.

Many of these products, take for example rhino horn, do not come in attached to the head of a rhinoceros. They come in in the form of powder in vials. They must be subjected to rigorous analysis to determine the presence of enzymes and other chemicals. Those tests often take weeks to complete and when a shipment consists of several hundred separate items, as commercial shipments often do, the Fish and Wildlife Service will simply be unable to accomplish within 30 days what your bill requires and will be required to return to smugglers those contraband items.

Secondly, Mr. Vento pointed out the practical consequences for the bald eagle. Mr. Metcalf earlier described the success of the bald eagle in his state as a stellar success. It has been a substantial success almost everywhere in this country. The recovery plans for the bald eagle are working extremely well. Despite that, however, to continue on that successful path, here is what your bill would require.

It would require the Secretary to make a national interest determination to continue to protect the eagle. It would require Congressional concurrence with that. It would require 48 governors to nominate members to an assessment team and 1,500 county governments to nominate members to that same assessment team. It would require the Secretary to review the assessment from that huge team and to prepare a conservation objective and a new conservation plan all within 18 months.

Frankly, sir, I see no reason why our resources need to be squandered in that way. The bald eagle is doing fine and there is absolutely no purpose in those sorts of byzantine requirements.

Third, I am sorry that Mr. Young is not here because Mr. Young played a very important role in 1982 in overturning a court decision which had required reliable population estimates of species protected by CITES before those could be exported. The problem was that that court decision was met with resistance by professional wildlife managers who pointed out that reliable population estimates are not necessary to make the sorts of determinations that are necessary to assure that export will not be harmful.

And, in fact, the International Association of Fish and Wildlife Agencies, the director of the Louisiana Fish and Game Department, and other state fish and game agencies all were consistent in their view that to require such population data was wasteful, unnecessary, and in most cases impossible, yet your bill in three different locations requires exactly that sort of information for the species that this Act tries to protect.

I submit to you just as in 1982 when Mr. Young and Mr. Tauzin and others concluded that the court decision requiring that sort of data was irrational, so too this bill requiring that sort of data will have extremely mischievous and wasteful effects upon protecting endangered species. I know that a lot has been said about sound science here and I know that the Republican policy statement on

the Endangered Species Act begins with a statement of adherence to the importance of sound science.

Yet I have to say that this bill reflects in my judgment a very poor understanding of science. For example, among other things this bill requires that petitioners for the listing of species submit the names of the peer reviewers of the scientific articles upon which they rely. Well, sir, unfortunately for the drafters of this bill, that is impossible to do because a key element of peer review is confidentiality. No one knows who peer reviews articles that appear in scientific journals. The editors and the authors will not divulge that information, so you require of petitioners information that is impossible to provide.

Lastly, I want to point out that this bill requires some things that are simply nonsensical. For example, this bill authorizes the Secretary to issue captive breeding permits for endangered species like pandas, chimpanzees, and what have you, on the basis that someone has previously received a permit to kill blackbirds. You didn't miss understand what I said, sir. That is what this bill actually does, because it says anybody who has received ten or more permits under a long list of laws, including the Migratory Bird Treaty Act, is by virtue of that fact qualified to receive a captive breeding permit for endangered species.

Well, one of the permits most frequently issued under the Migratory Bird Treaty Act is for killing blackbirds to protect crops, so one consequence of this bill is to allow permits to be issued under those circumstances. My point is not to suggest that anybody really intended that result. I don't think they did.

Rather, my point is simply to suggest that this bill strikes me as having been prepared very hastily and rather carelessly and I would strongly urge you to take the time to go back over this more carefully and to recognize that there are many parts of this bill that impose unnecessary requirements, lead to totally illogical results, and can properly and should properly be changed. Thank you, sir.

[Statement of Mr. Bean may be found at end of hearing.]

Mr. POMBO. Mr. Moore.

**STATEMENT OF HON. HENSON MOORE, CHAIRMAN, ENDANGERED SPECIES COORDINATING COUNCIL, WASHINGTON, D.C.**

Mr. MOORE. Congressmen, thank you, Mr. Chairman, for the chance to testify this morning. I am here on behalf of the American Forest and Paper Association and its 256 direct member companies and some 80 affiliate organizations, and also the Endangered Species Coalition which is a coalition of companies, unions, landowners, who are involved in ranching, farming, forestry, mining and fishing.

We applaud the work you have done in this area. We support the bill that you have come forward with. Basically it is our opinion you can't protect a species by endangering the livelihood of people. In this particular point we have pitted the species against the landowner. That is not going to work. Your legislation is moving to try to correct that and find a way to give the landowner, a stakeholder in this, to where they will become willing participants, rather than

begrudging citizens in terms of working with trying to protect endangered species.

There are a number of things in the Endangered Species Act over the 22 years it has been in existence that those people have had to live under it and deal with it and administer it. It found they are not working like they should. Most people will indicate, including this administration, that there are things wrong with it that need to be fixed.

I think your legislation goes a long way to fixing those things. It is a good starting point. It is a good point from which to work and try to see if something can't be perfected. It makes the existing law work better than it does. There are a number of mechanical problems as I indicated. You have addressed most of those we can think of or we have been able to find.

But there is also a very basic problem that I started out speaking to and that is the pitting of a landowner against a species. You have heard the examples before where the farmer is now planting fence row to fence row, of where people are prematurely cutting timber, where people can't build on a residential lot or an acre and a half of land they bought to build a house on because of the fear or the reality that the Endangered Species Act will not allow them to use their property.

This isn't helping protect endangered species or any species or wildlife, and the issue really isn't, and we can thank the passers the people who have supported the Act in the beginning. This law has gone a long way to make the American people understand that there are endangered species in addition to wildlife in general that ought to be protected.

I don't know many people today who seriously would take the opposite position and say that we shouldn't have a national law on protecting endangered species or we shouldn't be interested in that. I think that is a highly sociably unsupportable position and certainly people that we represent don't believe that. The question is how can we make it work, how can we work together to where people don't have a fear of this law but quite the contrary have a willingness to try to work with the government and try to work with people who care about endangered species to see that they are protected.

The basic problem of pitting a landowner against the government is never going to work. It is going to create a lot of hostility because some people who may when this law was crafted 22 years later not knowing quite how it was going to turn out are overlooking the fact that an awful lot of people came to the United States over the last 300 years for the right to own property. That is what separates us from most countries in the world, that anybody can in this country.

And the fact that a landowner has no rights virtually under the way the legislation works today just isn't going to be considered as fair and balanced by the American people. They believe very strongly there needs to be a balance in fairness and existing law doesn't have that. And I think most people believe and most people have said you have got to find some way to create an incentive for the landowner to want to work with this.

And that leads to the point that that incentive and that kind of a system to cause landowners to want to work with the government is going to cost something. Protecting the environment costs money. Somebody has to invest money to do that. Protecting endangered species costs money. Somebody is losing some economic right that they have. That costs something and I think the first thing this legislation does is faces up to that and says that somebody is going to bear the cost besides the landowner. It is going to be society as a whole and that is a very fair way to go about it.

We are being very honest with the American people in saying it costs something to protect an endangered species and therefore we are going to help come forward with paying for that cost. Once you do that, I think you are going to find landowners show a great deal more interest in trying to work with you.

Therefore, Mr. Chairman, we conclude by saying that you have fixed most of the abuses we have been able to identify and to call to the attention of this committee. While the legislation may not be perfect in certain people's opinion, the law is far less perfect and I think we err greatly by not moving forward, and by moving forward to amend this law than we would by sitting still and letting the abuses continue on the existing law. Thank you.

[Statement of Mr. Moore may be found at end of hearing.]

Mr. POMBO. Thank you. Mr. Irvin.

#### **STATEMENT OF BOB IRVIN, ENDANGERED SPECIES COALITION, WASHINGTON, D.C.**

Mr. IRVIN. Thank you, Mr. Chairman. I am Robert Irvin, Deputy Vice President for the Center for Marine Conservation. In addition to my own organization, I am pleased to be testifying today on behalf of the Endangered Species Coalition. I am testifying on behalf of the coalition. He is testifying on behalf of a different group. Our coalition represents more than 200 environmental civic, religious, health, business and labor organizations across the nation.

I think that the National Research Council in its recent report, Science and the Endangered Species Act, really summed it up quite appropriately when they wrote, "the Endangered Species Act has successfully prevented some species from becoming extinct. Retention of the Endangered Species Act would help to prevent species extinction."

Your bill, Mr. Chairman, purports to retain the Endangered Species Act but it reminds me a little bit of the old Greyhound bus station in downtown Washington. The developers took that station and developed it into a fancy office building. If you look at it outside there is still a sign that says Greyhound, there is still a dog on the front, but you can't catch a bus there, and that is the effect of this bill. There will still be a law that says Endangered Species Act but it won't protect endangered species.

This bill undermines or eliminates every important protection for threatened and endangered species under the ESA. It is not based on sound science. It will be enormously costly, both ecologically and economically to the American taxpayer.

In the time allotted to me, I don't have time to go through all of the things that are wrong with this bill. It abandons the goal of recovery of the Act, it undermines habitat protection, it eliminates

Federal agencies' duties to conserve endangered species, it imposes wasteful bureaucracy and needless cost on taxpayers.

What I would like to do is spend a few minutes focusing on what this bill does to one single group of endangered species, endangered marine wildlife. Some of this country's most beloved and visible species—humpbacked whales, California sea otters, Hawaiian monk seals, Pacific salmon, stellar sea lions, Kemp's Ridley sea turtles, marbled 146 murrelets, and other seabirds, and Florida—manatees because this bill will harm those species dramatically.

Section 201 of this bill contains an across-the-board exemption for incidental take of endangered marine wildlife other than fish out to the 200-mile limit of U.S. waters. What this means is that off of California the oil industry won't have to lift a finger to protect California sea otters anymore, but they can go about their drilling activities, their barging activities, all of those things, without worrying about the Endangered Species Act.

I think one of the most striking things too about this bill is the degree of overkill it engages in because, as if that across-the-board exemption wasn't enough, it has specific exemptions. For example, Section 208 specifically requires the Secretary of the Interior to exempt shrimp fishermen from the requirement to use turtle excluder devices if they undertake some other measures to protect sea turtles somewhere in the world. Section 104 has a similar provision exempting people from the take prohibition of the Act if they participate in some unspecified way in captive breeding, predator control, artificial feeding or habitat management programs.

And Section 205 requires the Secretary to give priority to research and alternative technologies to protect endangered species even if the technologies that are being used now are perfectly fine.

So, in other words, again, even though turtle excluder devices work to protect turtles, the Secretary would have to look into some other device for doing this. And I think this is particularly ironic. It comes at a time when, not only are TED requirements in place and sea turtles are being protected, but when you have the National Fisherman magazine in its October issue right at the top of the cover saying "Gulf shrimper yards are booming." So you are offering this extra benefit to an industry that is doing fine under the existing requirement.

Mr. Chairman, this bill does a number of other things to harm endangered marine species. It eliminates the Secretary of Commerce from his responsibility to protect endangered species, doing away with 25 years of experience that the National Marine Fisheries Service has in protecting endangered marine wildlife. Now alluding to some of the sloppy drafting that Mr. Bean referred to, while the bill does away with the Secretary of Commerce's responsibilities, it continues to authorize increased appropriations for the Department of Commerce in the latter part of the bill.

Mr. Chairman, the bill will also harm marine species internationally. Before the United States can take any steps to protect our own stocks of salmon which may be in trouble, we have to consult with countries like Japan and Russia and other nations that fish for salmon on the high seas.

In conclusion, Mr. Chairman, let me just say this. The Endangered Species Act is our nation's promise to ourselves and to future

generations that we are going to leave them a world as rich in biological diversity as the one we enjoy. If this bill is enacted, that promise will be broken. In my written testimony, I have a number of suggestions for responsible reform to the Endangered Species Act. If this committee is interested, I will be happy to describe those in greater detail during the question period. Thank you.

[Statement of Mr. Irvin may be found at end of hearing.]

Mr. POMBO. Mr. Stallman.

**STATEMENT OF BOB STALLMAN, NATIONAL ENDANGERED SPECIES ACT REFORM COUNCIL, WASHINGTON, D.C.**

Mr. STALLMAN. Thank you, Mr. Chairman. My name is Bob Stallman. I am president of the Texas Farm Bureau but I am here today representing the National Endangered Species Act Reform Coalition and we are a member of that coalition. I do appreciate the opportunity to appear before you today to testify regarding H.R. 2275, the Endangered Species Conservation and Management Act of 1995.

As Mr. English testified before this committee several months ago, the coalition is made up of a broad cross section of America that is most affected by the Endangered Species Act. Our members range from small individual landowners and farmers, small companies, rural electric cooperatives and public power entities to agricultural interests, water districts, mining interests, and other companies.

We commend the committee for the work of the task force chaired by you, Mr. Chairman, and we commend you for listening to the voices out in rural America. I particularly appreciate you bringing the task force to Boerne, Texas. I think you learned a lot of the problems with the current Endangered Species Act at that hearing.

We urge the members of this committee to move swiftly and favorably to report H.R. 2275. This legislation offers the only clear hope for reform of the Endangered Species Act in the U.S. House of Representatives. We recognize that the bill is long and complex. We urge you as a committee and as Members of the U.S. House of Representatives to recognize that complex and difficult endangered species management issues which have been years in the making cannot be papered over with vague changes in the law.

We believe this legislation represents responsible reform. To make the Endangered Species Act work, any reform must accomplish at least the following specific changes in the law.

We must place the ESA on equal footing with other laws and responsibilities. Conserving species is an important goal for our country and our Federal Government must play a role in that process. However, that role cannot be undertaken at the expense of all other government functions.

The ESA listing process should remain based on science but should be opened up for scientific peer review on key biological decisions. This is absolutely critical to ensure that species listed for protection under the Endangered Species Act truly are threatened or endangered and Title III of this bill does that.

We need to provide a more open and balanced recovery planning process. Title V establishes a conservation planning process which

allows much greater public input and provides for public hearings in affected communities. It also provides a significant change in the Endangered Species Act allowing the government to determine the most appropriate level of species conservation. We have urged the Congress to clearly authorize conservation standards other than full recovery and this bill does so.

We must significantly increase incentives for species conservation. There are several significant increases in incentives for species contained in the bill and which we support. In addition, we commend the leaders of this committee for introducing separate legislation dealing with the most important issues of tax incentives and a greater agricultural habitat conservation reserve program. These other bills are significant and necessary if we are to establish a truly incentive-based system for species conservation.

Probably most important, we must provide compensation for lost use of property. We recognize that compensation can be a difficult subject for local governments as well as for the Federal Government. As a coalition, we strongly believe that proper endangered species management should seldom, if ever, require that an individual landowner lose his or her property in a manner that requires compensation to be paid.

If land and water are required for species conservation purposes, they should only be acquired on a willing seller basis. However, if a regulatory approach to ESA management is maintained in the upcoming reauthorization, a sense of fundamental fairness requires that property owners be compensated for lost use of property which has become dedicated to a public good such as conservation of endangered or threatened species.

We must establish clear standards in several areas for making the most difficult ESA decisions. Conservation of population segments of species should require special consideration or separate acts of Congress as was done in the acts that Congress passed to protect the bald eagle.

We need to establish clear standards for when habitat modification will be viewed as a violation of the law. That uncertainty must be removed for property owners. We need to establish clear requirements for the designation of critical habitat and the bill certainly moves toward providing these clear standards.

We need to significantly increase the involvement of state and local government. They have a great deal of expertise in land management and wildlife conservation and we must make use of that. We support the delegation of endangered species management to the states as is called for in the bill, as well as the significantly increased role of state and local governments found throughout the bill.

And, finally, we support the provisions of the bill which provide for cooperative management agreements that do provide for regulatory certainty.

In conclusion, the National Endangered Species Act Reform Coalition has worked on ideas for ESA reform for close to four years. We believe that this Congress has an opportunity to reauthorize and improve the ESA and bring this law which has direct impacts on so many communities much closer to the people.



If the politics of the past are allowed to continue to stalemate progress on this important matter, the law is doomed and with it many of our smaller communities as well as the species which could be saved if the law received needed improvements. Thank you.

[Statement of Mr. Stallman may be found at end of hearing.]  
Mr. POMBO. Thank you. Mr. Gordon.

**STATEMENT OF ROBERT GORDON, GRASSROOTS ESA COALITION, WASHINGTON, D.C.; ACCOMPANIED BY KATHLEEN BENEDETTO**

Mr. GORDON. Mr. Chairman, Committee members, I appreciate the opportunity to appear before you today on behalf of the Grassroots ESA Coalition, and in the company of my friend, colleague, and coalition member, Kathy Benedetto of the Women's Mining Coalition. Our coalition is a grassroots organization comprised of nearly 300 groups representing more than 4 million members.

We commend the Chairman and the task force Chairman for addressing several issues in their bill which we consider critical, including addressing the use of incentives, the definition of harm, and measures to protect private property which we anticipate will be heatedly opposed by those opposed to changing the way Washington does business.

There are different views on how to conserve endangered species but I think they can be generally divided into three groups. First, there are those who wish to retain the current program without significant changes. These interests argue that the current law is basically sound but that perhaps a few minor modifications are needed. This is clearly an attempt to stymie real reform, arguing for perestroika in lieu of meaningful change.

Secondly, there are those who recognize that the Act has been a failure for people and wildlife and who wish to alleviate the tremendous and adverse economic and social cost and to lessen a regulatory program's adverse conservation consequences by amending the law with such elements as tax incentives and measures to protect property.

Third, and finally, there is a group which believes in an all together different approach from current law which is where our coalition falls. This group sees the current Act as inherently counterproductive because it is a regulatory scheme rather than an incentive-based one. We recognize that those regulations which cause the social and economic conflict also cause the Act to fail for wildlife.

A regulatory approach makes endangered species or suitable habitat a liability, creates an adversarial relationship between landowners and conservation officials, and locks out many creative and proven management strategies useful for conservation. Today we have been invited to specifically address the measure pending before the committee so the rest of my remarks will focus on the two elements which the coalition members consider the most important.

First is compensation for regulatory takings. Our members firmly believe that no reform will be of any significant value and in fact will be counterproductive unless property rights are protected. This

step is essential to reduce the extreme adverse conservation consequences of regulatory takings.

Secondly is the reversal of the counterproductive and expansive interpretation of what constitutes harm. While there is increasing acknowledgement of the adverse conservation consequences caused by this punitive regulation, there is almost general recognition about the need to incorporate incentives into conservation. But to most effectively use incentives it is essential to reduce and remove regulations as landowners will not respond to an incentive put forth in one hand if they know that in the hand behind the back there is a club.

Without these two elements private property rights protection and responsible clarification of the term harm, the coalition does not feel a reform proposal would address any of the program's underlying faults. The coalition unequivocally believes in full compensation for losses of private land use from regulatory takings and that the greater the protection of property rights, the greater the benefit to wildlife and the greater the potential to enlist landowners as allies in endangered species conservation.

While the status quo environmental establishment opposes property rights protection and improving the definition of harm, they are clearly out of step with the public. A poll by the Tarrance Group for Project Common Sense and a poll conducted by the Competitive Enterprise Institute both reveal the public is prepared and would be overwhelmingly supportive of a program which includes these measures and even more that would be adamantly opposed by the status quo environmental community.

The public believes our endangered species program should be one in which states are on par with the Federal Government, if not vested with primary responsibility, that it should be based on incentives as well as provide for the protection of private property. These are all principles of the coalition.

This type of thinking is not comprehensible to an environmental establishment wedded to wage and price control era policies but we have learned a lot about big government shortcomings since then. The current Act is a prime example of a failed outdated law that needs to be replaced with one that works. Not a single endangered species has ever recovered from enforcement of the Act's land use regulations.

This punitive regulatory scheme pits people against animals and both lose. Its fruits are not wildlife conservation but bureaucracy, litigation and strife. We need to replace this outdated policy with a more dynamic and creative one. Frankly, what our members would prefer is to trade in the old law for a new model rather than to attempt to make repairs.

We do clearly recognize that the two provisions I have addressed as well as other specific provisions represent meaningful and significant reform to existing law. Indeed, without these key provisions, no amendment proposal could be considered a real change or garner our members' enthusiasm.

Our coalition recognizes these provisions' value and will work hard to educate the public on the importance of protecting private property so that private property may be used to protect nature

and to tirelessly advocate our principles, ideas we are confident will serve as the basis of a new era in conservation.

We commend you for the many provisions of your bill that correct serious flaws in the current law and thank you for the conviction to undertake these reforms and the opportunity to represent our views to you today.

[Statement of Mr. Gordon may be found at end of hearing.]

Mr. POMBO. Thank you. Mr. Cone.

#### STATEMENT OF BENJAMIN CONE, JR., GREENSBORO, NORTH CAROLINA

Mr. CONE. Thank you for having me here. I am Benjamin Cone, Jr. I live in Greensboro, North Carolina. I am a private landowner. I represent myself and no organization. I have 8,000 acres of timberland in eastern North Carolina. It was bought by my father in the '30's as a place where he could hunt, fish and get away from his busy industrial life.

He bought it. Consequently, when you look at his objective of buying the land, management of this land has primarily been for wildlife. Practices include planning for what we plant, chufa for turkey, we plant Balwin Island olive for turkey, we plant bicolor for quail, we plant corn for bear and deer and never harvest it. We burn regularly. Over the years we have had very little timber harvesting. What timber harvesting has been done has been mostly thinning, and we put a lot of fire in the woods.

Talk to most environmentalists and the management of this property is ideal in the advice of environmentalists. The thanks I got, of course, is management which creates ideal wildlife created the habitat for an endangered species as well. The thanks I got from the U.S. Government for these very expensive management practices for wildlife is 1,121 acres of timber I cannot cut unless—or I can cut it but if there is a threat of a felony arrest with a maximum penalty of one year in jail plus \$100,000 per incident, since I have 29 birds you could translate that I am liable for 29 years in jail, \$2,900,000 in fines. I think I could shoot my wife for less.

The economic loss of the timber I can't cut is \$1,425,000. I have consequently decided to change the management practices of my land on the property other than the 1,125 acres that is impacted. I have gone into a massive clear-cutting policy since finding the economic impact of woodpeckers. I have now clear-cut about 700 acres. I have 300 more acres scheduled for January or February of next year.

I am going to go to 40-year rotation instead of the 80- to 90-year rotation. I am going to eliminate burning. This hurts my soul, it hurts 60 years of progressive management, and it is created through the financial impacts of the Endangered Species Act. Now I want to read some comments. First of all, I understand the Young-Pombo bill and I would like to say it is a giant step in the right direction but I don't think it is the best solution because in my opinion what it does, it puts an—it keeps the regulatory burden but then creates an overlay of what I call financial—not financial reward but a break-even.

So you have solved the financial problem but haven't stopped the serious problem. And I would like to read my suggestions, and it

is in my written testimony and only this I will read, by the way. My recommendations to Congress. Cut out the negative incentives, create some positive incentives if possible. And I am going to expand on that.

At the minimum the Endangered Species Act should clearly regulate only direct harm to endangered species. Legal activities such as development, timber harvesting, and other habitat modifications that indirectly affect endangered species should be exempt from regulation. Negative financial or regulatory effects on private property owners should be removed from the law.

All efforts to protect, save and manage endangered species should be voluntary. Once these provisions are in effect, the next step is further encouragement. Congress could then provide financial incentives that would hasten the recovery and heighten the protection of endangered species. Examples of appealing incentives would include assistance with burning, government leasing of the property, tax relief, assistance in planning species-proper habitat, etc., etc., as far as the imagination can go. I appreciate the courtesy of being here. Thank you very much.

[Statement of Mr. Cone may be found at end of hearing.]

Mr. POMBO. Thank you. We are going to recess. We have a vote going on right now. We are going to recess the committee temporarily and we are going to run and vote. We will be back as soon as possible, and I apologize for the inconvenience.

[Recess.]

Mr. POMBO. We are going to call the hearing back to order and the other members will be back as soon as they get done with their vote. I appreciate all of your testimonies. Mr. Cone, you are correct when you say that we did leave a lot of the regulatory stuff in there. And we did attempt to overlay the incentive-based system on what remains of the regulatory approach.

But I hope you understand from listening to the other testimony that has been this morning so far and what you will hear later on that we have to prove that the incentive-based system will work. Even though we agree that that is a much better approach and from a fundamental approach, a policy approach, I would much rather have an incentive-based system than regulatory system.

I think that we have to put the pieces in place in order to make that work.

Mr. CONE. But even funnier and sadder to me is there are government policies that have worked directly against endangered species, and I will give you a wonderful example, inheritance tax. And I know this is a different subject but I got to get my two cents in while I am here.

I guarantee you when my wife and I die my children will have to cut every merchantable tree on the 8,000 acres to help pay the inheritance tax. No doubt about it because there is not enough liquid assets elsewhere. Another—

Mr. POMBO. I am on a time limit. I'm sorry, Mr. Cone. I know this is your chance but they give me a time limit too and I can only ignore it for so long. But the inheritance tax is one of the issues that we have discussed in terms of an incentive-based approach and using that as one of the incentives on the Endangered Species Act and as we begin to work our way through this, that will prob-

ably be one of the approaches that we do take in an incentive-based approach is doing something with inheritance tax as a means of putting incentives in the right place.

In the bill that we introduced, the companion bill that we introduced, H.R. 2286, we try to begin to do that so that we can make an incentive-based approach work and I think that that is important.

Mr. Bean, in your testimony I know that you brought up a lot of good ideas and I appreciate that, and I appreciate the time that we have spoken over the past several months in trying to find common ground and ways that we can work together to make this work.

I know that in order to prove your point you need anecdotal statements, you need anecdotal stories, you need to turn up the heat on the rhetoric a little bit in order to get your point across but a lot of times what comes out of it is not exactly accurate and if you talk about what happens with the smugglers and what could possibly happen.

Now in the way that we crafted the bill, we may need to tighten up the provisions that deal with people trying to smuggle endangered species or parts thereof in, and I appreciate that part of it and that you brought that out.

But our bill in no way legalizes people smuggling in parts of endangered species, and that is not an accurate statement.

Mr. BEAN. And it is not a statement I made. What I said was that the effect of your bill will be to force the Fish and Wildlife Service to turn back to smugglers the contraband they bring in. I base my statement, sir, on discussions I had with Fish and Wildlife Service wildlife law enforcement forensic laboratory personnel who described to me the nature of the tests necessary and the duration that those tests consume, the time they consume to be carried out, and that was the basis for my statement that the effect of your bill, the practical effect, will be to force the Fish and Wildlife Service to return to smugglers—

Mr. POMBO. But, you know, and again I am on a time limit, but you know very well that that was not the intention of the bill nor the reason that those provisions were put in there, and if you have other language which would take care of that possible problem that may exist, I would be more than happy to continue our discussions and work with you.

Mr. Moore, the organization that you represent represents large property owners, small property owners, a combination of all of those?

Mr. MOORE. A combination.

Mr. POMBO. In your experience with the Endangered Species Act, have the larger property owners, you heard mentioned here today Plum Creek and a few other examples of people that have been able to work the current Endangered Species Act and come out of it, in your experience have you been familiar with small and medium-sized property owners that have had the ability to come to some of those agreements and to work their way out of those problems?

Mr. MOORE. That is where the rubber really hits. You are quite right that a big company, while they don't like the way the law

works and while they think they ought to be compensated, they certainly have more wherewithal to be able to set aside property for wildlife habitat and go into a conservation program.

It is when you get to the smaller landowner where they simply don't have that ability. If you own 200 acres of trees and you are told that really 100 acres of that is needed to protect a certain endangered species, they don't have the financial ability to be able to do that.

Mr. POMBO. So in your experience you think that the provisions that protect private property rights in this bill would have a larger impact on the small and medium-sized property owners who may not have the resources to fight the Federal Government that the very large property owners do?

Mr. MOORE. I think the impact is the same on whatever size the landowner, namely, they are paid for any land which they lose or lose the right of, the use of, to protect endangered species. Where the impact you are getting at may come in is you may find more landowners willing to work with the government who are now scared and don't have the ability to be able to deal with an endangered species.

Mr. POMBO. Thank you. My time has expired. Mr. Saxton.

Mr. SAXTON. Thank you, Mr. Chairman. This hearing today that has gone on now for quite some time reminds of something that happened to me when I went to Israel not long ago. I was with some Israeli officials and we were discussing issues that had to do with Israeli security and I noticed that around the room there were a number of different ideas as to what the situation was and what ought to be done.

And I said to the folks in Israel, how do you all make a decision? It seems like you have got as many opinions as there could possibly be and they said, well, there is an old Israeli saying, you put 100 Israelis in a room and you get 200 opinions. And this bill reminds me of that occurrence.

What I think our real task is, Mr. Chairman, and I would like to share this with the panel and ask for their input, our real task here in my view is to find common ground. Our real task here is to find an approach that works. Maybe it is the Chairman's approach, maybe it is not. Maybe it is the Chairman's approach with some modifications. I don't know at this point.

Let me tell you what I did in my search for common ground. I tried to find some areas of convergence with regard to a lot of these proposals. And I will tell you frankly what I did. I just passed out this spreadsheet which has my name and Mr. Pombo's and Mr. Gilchrest's across the top along with a column called current law which is the current ESA bill.

And my staff did some research and found out that the Western Governor's Association had an approach which appealed to me. It appealed to me because it made a lot of common sense. It appealed to me because it adopted some things that were in current law and it appealed to me because there were some new things in it which I thought the folks out in hinter lands who had been elected by their constituents as governors had come together to say were good, new ideas.

And my bill with two or three very small changes contains many of the elements in the Western Governors Association's proposal. And in looking at it and comparing it with others, I find that there is also a great deal of commonality with Gilchrest and there is some with Pombo and there is quite a bit with current law.

I guess my question is if each of you were to be able to make one or two comments relative to the Western Governors Association approach which you will have to take my word for it, it is under my name, what would you say about it and if you would like to say that there is something in one of the other columns that you think ought to be slid over there or something in my approach ought to be slid over to Pombo's, just give us some ideas about how we can begin to come together on some of these ideas to create an approach that we can form a consensus around. Mr. Bean, would you like to start?

Mr. BEAN. Yes, sir, I would be happy to. I think there are many good ideas in the Western Governors Association proposed bill. I note that that bill does not make the major changes in the responsibilities of Federal agencies and private landowners that the bill currently before this committee does and I think that is the preferred approach.

I would also say that the Western Governors' approach does not burden the various processes that must be carried out in implementing this Act with the sorts of requirements that I described for the bald eagle, processes and requirements that in my judgment will really paralyze this program so I would encourage you in examining these various alternatives to look for those alternatives that can accomplish the objectives that you are pursuing efficiently and with only those requirements that are really necessary to make this program work efficiently and effectively.

My concern is that in the enthusiasm for making sure that the Fish and Wildlife Service never makes a mistake in anything it does, it is being asked to do the impossible too many times by the bill that this committee has introduced.

Mr. SAXTON. Thank you. Mr. Moore.

Mr. MOORE. I have not had the time to really study your provision. We certainly find some things in the Western Governors legislation we like as well but the thing that stands out right now, and we are looking at it trying to figure out where else it interrelates, is the lack of compensation. That to us is a major failure in what we see that you have shown us.

Mr. SAXTON. In other words, in the Pombo bill where property is diminished by a certain percentage, 20 percent or whatever the right number is, you would favor that type of an approach to compensation?

Mr. MOORE. Yes.

Mr. SAXTON. Thank you.

Mr. IRVIN. Well, Congressman, I think there are a number of areas of common ground in these various proposals that you have made, that Mr. Gilchrest is working on, the Western Governors Association is working on. The whole notion of preventing endangerment is something that we strongly support. The best way to head off these endangered species train wrecks is to prevent them from happening in the first place and so looking at ways to

protect species before they get to the point where they have to be listed is something that is highly warranted.

In addition, we support improving the recovery planning process, putting some deadlines on the process, putting some objective scientifically-based criteria for recovering a species and for delisting a species. In addition, involving all of the stakeholders in the process—the Federal Government, the state and local governments, industries that are affected, the environmental community, private landowners, all of those folks.

Mr. SAXTON. Thank you. As a matter of fact, one of the changes that I made to the Western Governors proposal is that we did put deadlines in the recovery plan proposal and you can read those there for yourself, but thank you very much. Yes, sir.

Mr. STALLMAN. Without having had time to review this, it is a little difficult, but three things jump out, I think, or at least two, and that is the definition of take. The Young-Pombo bill certainly is preferable in that respect. Landowner voluntary agreements is a component of all three bills and that is something that we have absolutely been promoting and that we believe ultimately will provide a lot more species recovery and maintenance than the current system. And then compensation as has already been mentioned. We absolutely have to have some compensation for property takings.

Mr. GORDON. A comment that other folks have already made but I would have to say is most important is that there is no—the only bill here that has a property rights protection provision is Young-Pombo, and, additionally, the definition of take. If those two elements are not addressed, the perverse incentives under the current law remain which is why this law has not functioned well.

Just in the brief time that I have had to review this, I would say there is one other item on delisting, it says you have specific—well, I am sorry, that is the Gilchrest proposal. But current law and the Gilchrest proposal assumes that all species can be recovered. That is probably just not a reality. There are things like the Iowa Pleistocene snail that are, you know, relics of another geological era and it just isn't going to happen in their existing natural habitat.

Mr. SAXTON. Thank you. Mr. Cone, do you care to comment?

Mr. CONE. I don't know anything really about the Western Governors bill but I got to reiterate any bill that approaches the private landowner that he is an enemy of the environment is so out of whack it is scary. If you look at the CET program and the forestry incentive, steward incentive programs, I can't give you the exact number but I bet you nine out of ten either have wildlife first, second or third.

So obviously private landowners love their land, they love to hunt, they love to fish, they love to look at it, they love to enjoy it. They don't want to harm it. Any approach that starts with they are the bad guys won't work.

Mr. SAXTON. Thank you very much, Mr. Cone. Mr. Chairman, I know I am well beyond my time so I will turn back to the—

Mr. POMBO. Well, I appreciate the question, Mr. Saxton. I think you can appreciate the difficulty which we went through in drafting our bill just from the answers that we got from this panel. You have one person on the panel who states that we ought to bring everybody in to the process—states, local government, all of the



stakeholders. And the other person criticizes that provision as having to call in too many people into the system.

So it is difficult to try to bring everyone in and not have a crowded room. I mean, that is the facts that we are faced with and that was the difficulty, one of the difficulties, in putting this together. Mr. Gilchrest, unless you want to pass.

Mr. GILCHREST. I will run for a 30-yard dash to the goal line.

Mr. POMBO. You will be tackled on the five.

Mr. GILCHREST. No, I won't pass. I am going to go for it. Let's see what happens. I do wish we had more—this is an excellent panel here. You represent a wide view of interest in the United States. That is what we need here to create a bill that is much more flexible and aspires to the goal of protecting, I think, what all of us have become much more aware of and that is biological diversity in the country.

Since I am limited in my time, what I would like to do is I am going to start off with Mr. Stallman. The question I ask Mr. Stallman is the premise upon which my next questions will be asked and I would like each person on the panel when I ask that question after Mr. Stallman just to respond with one sentence.

And I know it is difficult to respond in the complexity of this particular issue but rather than focus in on one or two items, I would like to do it from that perspective. We are talking about biological diversity and I think everybody understands the need for biological diversity, certainly agriculture as far as genetic diversity in a whole range of whether it is corn or soybeans or milo or pigs or cattle or whatever it is. There is a certain importance of genetic diversity.

If we look in the medical field and we see a whole range of recent chemical agents as far as discoveries are concerned from certain frogs that provide painkiller that is 200 times stronger than morphine and yet it is not addicting. Digitalis, we have heart medicine from a full range of species, cancer treatment from the yew tree, and the list goes on and on and on.

So I think everybody recognizes the importance of protecting biological diversity or at least we are getting pretty close to that point. And how do we do that in a bill that is trying to find the sense of cooperation among landowners, among all of Americans to participate in that protection and a variety of people have mentioned incentives and the Keystone report. I think it is right on and the Chairman has made some bills extracted from the Keystone report to provide those incentives.

And we need to stop the polarizing of we don't want an act, it is bad for the west, it is not good for the east or it is good for the east. We are one country so we got to stick together and we are trying to work this through this bill.

Mr. Stallman, just a sentence, I apologize. How important is genetic diversity in agriculture?

Mr. STALLMAN. Genetic diversity is important in agriculture.

Mr. GILCHREST. Thank you. OK. All right. We are on a roll here. We are on the one-yard line, Mr. Chairman. Now what I would like to do starting over with Mr. Bean, and just a sentence, as far as the bill now is, if we change the definition of harm, what will this do to habitat protection?

Mr. BEAN. Can I use a semicolon in this sentence? The definition of harm will have a profound effect upon the protection that species receive on private lands, an effect that will in my judgment largely render irrelevant the compensation provision about which Mr. Tauzin and others here have talked at length because as a result of that redefinition, there will not be circumstances in which private landowners will be in a position to claim compensation because they will never have suffered any sort of regulatory imposition upon the use of their land.

Mr. GILCHREST. Thank you, Mr. Moore.

Mr. MOORE. The definition in the Chairman's bill will resolve a controversy over what that term means and we do not think in the beginning it was designed or intended to conserve habitat and habitat needs to be provided for in another way other than through the current law's definition.

Mr. GILCHREST. Thank you, Mr. Irvin.

Mr. IRVIN. The bill's redefinition of harm means that, regardless of the ultimate impact on a species's survival and recovery, unless you can show a corpse, you will not have a take under the Endangered Species Act.

Mr. GILCHREST. Mr. Stallman, if you want, you can tell everybody what milo is as opposed—no, I'm just kidding.

Mr. STALLMAN. Prevent direct harm to a member of the species while limiting the formally arbitrary and overly expansive regulatory rulings by the Fish and Wildlife Service and in doing so reduce the perverse incentives to provide habitat on private property.

Mr. GILCHREST. Thank you. The gentleman from North Carolina, and I hope we can pass an estate tax really fast so your kids can hold on to those trees.

Mr. CONE. Well, I hope you got 30 years, sir. I am really not smart enough to comment on the value of biodiversity. It is too large for a small private landowner that was a math and German major and not a biology major.

Mr. GILCHREST. Well, sir, I think you gave an excellent testimony this morning that was very eloquent and I am sincere in working here in this Congress, not in the next Congress but in this Congress to create those incentives so that your children do not have to sell one square inch of that land.

Mr. CONE. Thank you.

Mr. GILCHREST. Thank you, Mr. Chairman.

Mr. POMBO. Mrs. Chenoweth.

Mrs. CHENOWETH. Mr. Chairman. Mr. Cone, I enjoyed reading about you today in the Washington Times. I am sorry that you had to go through what you have had to go through. And I share the sentiments of my colleague in hoping that this is resolved right away. It is interesting that we have military people down in Fort Benning, Georgia, using military time to lay out the grid for the breeding habitat of the red-cockaded woodpecker, and we are all—

Mr. POMBO. Mrs. Chenoweth, I don't want to interrupt you but if you will delay your questions until we return from the vote, I think that you will be able to ask them all in a row because if you start now, we are going to end up having to leave before you finish

so if you wouldn't mind we could recess and do your vote and then you could ask all your questions at once.

Mrs. CHENOWETH. Certainly, Mr. Chairman.

Mr. POMBO. Again, we have a vote on the floor. We will recess temporarily and return as fast as we can.

[Recess.]

Mr. POMBO. We are going to call the hearing back to order and I will warn you ahead of time, we are under a five-minute open rule on the floor so we don't know when votes are going to come but we will try to move as quickly as we can. When we recessed, Mrs. Chenoweth was just beginning her questions and at this time I will yield to her. Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman. Mr. Cone, I was just remarking that down there in around Fort Benning, Georgia, they are laying out grids for the breeding habitat of the red-cockaded woodpecker and that is what we are having our military people do now instead of laying out grids on Saddam Hussein and what his activities are.

So, you know, I was surprised and very sorry about this story that I read in your testimony and that I also read about in the Washington Times but thank goodness it provoked media attention that it did. Kathleen, I wanted to ask you, have you reviewed the Young-Pombo bill?

Ms. BENEDETTO. Pardon me?

Mrs. CHENOWETH. Have you reviewed the Young-Pombo bill?

Ms. BENEDETTO. I haven't reviewed thoroughly the most recent version of it but I have read it, yes.

Mrs. CHENOWETH. OK. As you know, this has very systematically and in an organized manner set out 20 separate sections and in the past we have seen the Federal Government agencies take great license in interpreting various provisions of the United States Code and the regulatory process.

Can you tell me if my ranchers in the Runo Valley or the timber mills in Orofino will be able to conduct their business and protect their property rights in light of the regulatory atmosphere that has prevailed and may continue?

Ms. BENEDETTO. I think it has been very difficult for the people who operate on Federal lands or have private property adjacent to Federal lands in the west to operate in an appropriate manner under the current regulatory scheme of the Endangered Species Act.

Personally when I reviewed—looking at the 1973 Act, I don't believe the regulators are really regulating to the full extent that they could under that law. I think Chairman Pombo has made an effort to try and put some restrictions on how far the regulators can go and to try and bring balance into how this law is administered.

One of my primary concerns is that the law, the 1973 law, did not take into consideration that extinctions are part of the natural process, and if you look at the geologic record you can see throughout time that extinctions have occurred. We are all familiar that the dinosaurs were here for several millions of years and they are not here any longer and they disappeared long before man ever emerged as a species.

I think that Congressman Pombo has put that into the findings of his bill and I think that will lead us in a direction where we can make better choices about how this law is administered and regulated. I am still concerned that regulators will push that envelope as far as they can to really put constraints on what people can do and I think often it is based on just misinformation and misguided objectives.

We are part of the natural process and I think many people that work in the outdoors have a much greater conservation ethic than many people who live in urban areas. They live there, they have been there all their lives. There are generations of families that have established a good stewardship, environmental stewardship. And I think that we need to be very careful with the regulations that are promulgated with any new law.

Mrs. CHENOWETH. Thanks, Kathleen. You know, I would like to ask Mr. Moore, Henson Moore, as we have seen with the spotted owl and many other instances, and of course the spotted owl decision with regard to Sweet Home was devastating to us all because we certainly—some of us thought, I am sure, including you thought that private property would be protected based on an assumption of a whole body of law before the Sweet Home decision.

But the Endangered Species Act has created some real undesired train wrecks, especially in the forest paper industry. With the multitude of government regulations and their effect on local economies many times these problems would not have occurred if there would have been a process in place in which a stringent review would have been done on the Secretary of Interior's recommendations with regards to what effect it would have on the economy and that has not been done primarily because they bypass the NEPA process in preference for the biological opinion which is distorting the purpose of the law.

After reading this new bill, I notice that the Secretary still maintains his position of having the final say or veto power on virtually every Federal decision. Unless this is changed, how are we going to avoid future train wrecks and do you agree with my conclusion?

Mr. MOORE. I think I know where you are going, Congresswoman, but I am not sure we can come to the same conclusion you do, that there are parameters on any agency and that ultimately that this has to be dealt with in court so I am not sure we can agree with your conclusion.

Mrs. CHENOWETH. I think ultimately probably some of the biggest train wrecks have occurred in court such as Sweet Home and one of our biggest problems is that people cannot afford to go to court anymore but I would like for you to be sure and take a look at page 82 beginning at line 16 and get back to me with regards to my question.

Mr. MOORE. We certainly will.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Mr. POMBO. I just had a couple of follow-up questions for the panel before we excuse you, before someone else comes in. Mr. Cone, I was told that you recently filed a claim, a takings claim, under the Endangered Species Act, is that correct?

Mr. CONE. That is correct. It was filed the end of—I think it was about the end of July. Yeah, at the end of July it was filed for

\$1,425,000 taking under the Endangered Species Act. It is my and my lawyer's understanding that this is the first takings case only under the Endangered Species Act without 404 permits tied in or some other thing.

It is stalled, delaying for another meeting with Fish and Wildlife Service to see if we can compromise or work something out. I am not sure what will happen but the next action, I guess, is not in the court but a private meeting October 12 between my gang and their gang, I guess.

Mr. POMBO. So it is up to the attorneys?

Mr. CONE. Not totally. If I can work something out with the Fish and Wildlife Service, I would be glad to but it has got to be reasonable and sensible. But attorneys will be there, biologists will be there, foresters will be there. It will be a big group but not the legal, it will be a private meeting to see if we can compromise to see if we can work this out.

Mr. POMBO. In your experience as to what you have been through and you have testified to what happened in your case, to the extent that you have gone in taking this and filing a takings claim and where you are right now in the process, is this something that the average property owner could undertake?

Mr. CONE. I don't think so. I have got about \$70,000 invested so far in professional and legal help, in expenses. I am estimating legal fees if it continues on will be another \$100,000 to \$150,000. I don't think the average small landowners will undertake it. Their solution is different. All of my neighbors at this point have clear-cut all of their timber. They have just solved their problem.

Mr. POMBO. So their response to the current Endangered Species Act was to destroy the habitat?

Mr. CONE. Absolutely. I can't impugn someone's motives that I don't—without testimony from them or asking but if you look at the ground there is a lot of timber missing that was there four years ago.

Mr. POMBO. And your response to the implementation of the current Act was not only to destroy the habitat but also to go to court over it?

Mr. CONE. Not exactly because if I destroy the habitat, I go to jail. I'm just making sure they don't expand by destroying the habitat they could move into. I mean, birds do it, bees do it. I am just saying you got 1,100 acres, you are not going to get any more. I am clear-cutting extra habitat outside of the—

Mr. POMBO. The part that is not covered by the—

Mr. CONE. The 1,100 acres.

Mr. POMBO. The 1,100 acres. I understand that.

Mr. CONE. Please don't say I am cutting in the restricted area.

Mr. POMBO. I am not saying you cut any of those 1,100 acres. Mr. Shadegg, I will yield to you if you have your questions prepared.

Mr. SHADEGG. Thank you, Mr. Chairman, I do. Mr. Saxton kind of started where I wanted to start and that was by pointing out that one of our goals here ought to be to identify where we have common ground. We can find lots of places where we may be miles apart and that is probably not a very productive exercise. I think it would be more productive to focus on areas where we are in agreement.

I have been of the view and have expressed it in Arizona in my district that those most concerned with the protection of species ought to, at least in my logic and perhaps I am mistaken, embrace the notion of compensation that if what we do with compensation is create habitat or facilitate the creation of habitat or facilitate the protection of species that we are advancing a goal that those who are concerned about losing species ought to agree with.

I guess I would like to know how you view the issue of compensation if you see it the way I see it or see it radically differently.

Mr. BEAN. In this bill, as I said earlier, I think you were not in the room at the time, I view the issue of compensation as a red herring because I believe that the changes that this bill makes in the requirements applicable to private landowners negate any possibility of a situation arising when compensation would be owing.

I do believe, however, that it is extremely important to offer incentives to private landowners to get them to do the sorts of things on their land that would be beneficial to endangered species. I commended Mr. Pombo for having introduced a tax bill and another bill that both have as their purpose creating those incentives.

I would echo the sentiments that members of this committee have stated today that the Keystone Center recent report on incentives contains a great many good ideas along those lines. I think that parenthetically I would add that Mr. Pombo's bill on reforming estate tax law would, according to my calculations, based on Mr. Cone's filings in the Court of Claims, result in a net estate tax reduction for him of between \$4 and \$6 million, in other words, two or three times the amount that he claims to have lost as a result of the restrictions today. So those sorts of incentives seem to me to be the best and most appropriate way to deal with the private landowner issue.

Mr. SHADEGG. My time is limited. You got to my second point before I got there which was to see how you feel about incentives. I am glad we are on agreement on the issue of incentive but let's go back to compensation. You believe that for reasons dealing with other things in this bill that you are not willing to take the compensation portion of the bill as genuine or bona fide but I didn't get an answer to my question.

My question is as a general concept in legislation designed to protect species and to advance the goal we all agree with, would you not agree or do you—do you or do you not agree that compensation is an important—should be an important part of the process?

Mr. BEAN. My feelings about compensation are as follows. I believe strongly that landowners should be compensated for any taking of their property in violation of the Fifth Amendment of the Constitution. I believe equally strongly, however, that it is a mistake and a slippery slope for Congress to begin going down to compensate people when they have not suffered a taking and they are not entitled to compensation under the Fifth Amendment.

I certainly see no basis for extending compensation to people when they are not entitled to it under the Constitution when the issue is endangered species and not when it is some other issue. I think once you start down that road on this issue, there is no logical place to stop on any number of other issues.

Mr. SHADEGG. Let's go back. I think we ought to find places where we agree. You embrace the concept of compensation in those circumstances where you say the Supreme Court has said it should occur. I quite frankly believe as a lawyer and as a lawyer who practiced eight years in the Arizona Attorney General's office relying upon case law precedent as the only way that we deal with how to resolve these issues is a mistaken one.

We would never have passed any number of laws had we not—had we just said, well, the courts dealt with that, that is good enough. Instead, the Congress' job, I think, is to fill in the gaps. Judges write a decision for one specific instance. They do not look at what we are supposed to look at which is creating a different situation.

My time is really limited. I want to ask Mr. Gordon, somebody just handed me the classic note which is the Civil Rights Act. I didn't use it because it always gets used. We would not have enacted the Civil Rights Act had we just wanted to rely on the Supreme Court's decisions at those times.

Mr. Gordon, I want to ask you to talk about the issue of incentives and about the climate that the current law creates and, quite frankly, even though this is Mr. Pombo's hearing about the climate that a certain other bill introduced yesterday which would create a different climate for the protection of endangered species.

Mr. GORDON. Clearly, my opinion and I think the majority of the members of the coalition believe that the current law causes a climate of conflict between property owners, property managers, and land use regulators. The best thing in our opinion you can do to alleviate that is to go to an entirely non-regulatory system. There is just no better way to go about it.

There is obviously perverse incentives created under this law as you have heard today from the personal experience of Mr. Cone and it is not just Mr. Cone. It is people all over the place. If you go to Texas, you will find that the cost of cedar post has dropped dramatically since the Black Capped Vireo and Golden Cheek Warbler have become—have had a dramatic effect on land values.

If you have cedar growing on your property, you may get a bird letter and you can't build a single family home or something without getting this permit. As a result, people don't want cedar. People that had no reason to be an enemy of a cedar tree on their private property have turned against it and the price of cedar posts has plummeted.

The current system basically functions like a Soviet five-year plan. We just demand that something is going to happen and totally ignore the reality of human behavior that we could get to where we would want to be a lot easier if we worked on an incentive on a cooperative basis rather than this absolute conflict between regulators and regulated folks. Everybody wants to conserve endangered species and it is ridiculous to turn stewards of private land against them.

Mr. SHADEGG. Mr. Chairman, I know my time has expired but let me just make a couple of quick comments. One, I want to reiterate again, given the proportion of endangered species which do appear on private land, I think it is absolutely essential that we

figure out a structure which encourages private property owners to cooperate.

And I will tell you the best analogy that I have been able to come up with, and I have struggled with it, is I can with my 13-year-old daughter and my nine-year-old son issue them an edict, you will go to bed at 9:00 and that works. We are not dealing with children when we are talking about private property owners in America.

And I just happen to believe that command or this is the rule and you must follow it will work in the instance where we see it but the implications for all other private property landowners to just say, oh, they are going to force my neighbor to do this, well, I am going to make sure they can't force me to do that, creates a climate in which we are not advancing the goal of the Endangered Species Act but retarding it.

Mr. POMBO. Thank you. I just have one final question for Michael Bean and then we can dismiss this panel. Mr. Bean, in the definition of take a lot of times when we think of endangered species we think of the pristine wilderness and cutting down trees and all this stuff. And we fail to think about what is really happening with the Act and I know you are familiar with the fairy shrimp in California and some of the other species and their habitat.

With your experience and with what you know, do you think that there is any room in your mind to redefine the definition of take and what it is to harm a species or do we have to have the strict interpretation that the Supreme Court recently decided on that one case?

Mr. BEAN. I believe there is plenty of room to redefine it but I think it would be a mistake to redefine it in such a way as to violate the fundamental scientific principle that the survival of species will depend upon the survival of their habitat. And to somehow separate and compartmentalize habitat on the one hand and things that directly affect species on the other is to make a very fundamental mistake.

That is not to say the existing definition of harm has to be exactly as it is: every word, every punctuation mark. I think there is some room to change it in ways that might make it more effective and more acceptable to landowners but if you go so far, as I think your bill does, to eliminate any ability to protect habitat through that mechanism you will have undercut the protection endangered species receive by a very large amount.

Mr. POMBO. What kind of changes would you make to it to make it so that property owners can live with the definition?

Mr. BEAN. Well, I think the key need that the definition has is clarity as to what landowner obligations are. In my view the problem with the existing definition is that most landowners when reading it don't have a clear notion of what they can do and what they cannot do, so it seems to me one solution frankly is to try to have more species-specific definitions of harm so that individual landowners will have a much greater level of certainty about what they can and can't do than they currently have with the existing definition.

Mr. POMBO. In the bill, H.R. 2275, the bill that is before us right now we attempt to do that by requiring that they define in the con-



servation plan what the definition of take would be with each individual species because there is a difference between aquatic species, between species in the forest, between species in farmland and what the definition of take is and I think it was Mrs. Chenoweth that said earlier—no, excuse me, it was you—who said earlier that the law is not being taken to its extreme right now in some cases.

In some isolated cases, yes, it is, but in other cases they could go much further. If they took the law to the extreme that they have with the spotted owl and did that with the fairy shrimp, we would literally shut down the valley in central California, and so there are differences.

Mr. BEAN. Well, with respect to the authorization in your bill in a conservation plan to have that plan define in some way what the scope of the take prohibition should be, I understand that to mean that discretion exists within the limits otherwise set forth in the Act as to what take and harm mean. I do not understand that provision to mean that through a conservation plan the Secretary can embrace a harm prohibition that encompasses habitat protection.

Mr. POMBO. I think we are debating on a different level. I think we agree on it but I think for the sake of argument we are debating. Mr. Shadegg, you had an additional question.

Mr. SHADEGG. If we have time for a second round, I would be happy to do it.

Mr. POMBO. You can do it today.

Mr. SHADEGG. Great. I will do it. Let me just ask Mr. Bean this question and then if others want to comment on it, they can. One of the things that I have encountered in learning about ESA and its implications in Arizona, and in conversations with people kind of on the ground on forest issues and on marine issues is an internal conflict in the current law which is the command that you manage for the endangered species when, in fact, it is only a matter of time until in any given arena there are multiple endangered species.

And so what I have been told is that in the years that we have been under the Act the Fish and Wildlife Service started out saying this is the law, you will do this, by gosh, and everybody beneath them took that as the edict. It was all driven by a command to protect and identify endangered species.

Guess what? Time has gone by, they now discover in the same habitat there is another endangered species, and now to protect the habitat for this species, we do things to damage the habitat necessary to protect the other species. I think that the structural problem which we need to deal with I would be interested in if you agree it is a problem and how you think it should be dealt with.

Mr. BEAN. Well, that in fact is one of the issues that the National Academy of Sciences report on Science and the Endangered Species Act explicitly addressed and what they found is that while there is the potential for that to occur it has not occurred heretofore, and they concluded that it is not likely to be a serious problem in the future.

Let me add my own view that if the strategies we employ to protect the species that are currently listed focus on protecting their habitat, then it is not likely that we are going to have many other species dependent upon those same habitats being added to the

list. If, on the other hand, we try to protect species now on the list by relying upon captive breeding and other artificial measures while doing nothing to maintain the habitat, then we will assuredly have more species being added to the list that depend upon that habitat that we are not protecting.

Mr. SHADEGG. Well, I don't know of anybody that is arguing we ought to do nothing to protect habitat. To me that is a red herring argument. Does anyone else want to comment on that particular point? Yes, sir.

Mr. IRVIN. Well, Congressman, the Endangered Species Act, since it was enacted in 1973 has clearly provided that one of its purposes is to conserve the ecosystems upon which threatened and endangered species depend. And there is much more that can be done in that regard to make the Act more effective for conserving ecosystems, but the bill that is before this committee will undermine the ability to do that in a number of ways.

Let me just give you one example. This bill provides for the establishment of cooperative management agreements to take over the management of a particular area for endangered species. Once one of those agreements is in place, all of the usual provisions of the Act are suspended, including the ability to list species in the future in that area. So once you make a decision under these cooperative management agreements, you will never be able to do anything to adjust that in the future.

Mr. SHADEGG. I am not familiar with that particular provision. I have some doubts about its characterization but—

Mr. IRVIN. It is Section 102.

Mr. SHADEGG. Let me ask you a second point. Well, let me tell you—you say the Act does that, I will tell you on the ground in Arizona the forest managers that I talk to tell me that Fish and Wildlife was giving them certain edicts to begin with and then now that they have recognized that there are competing species that need to be dealt with or at least to be concerned about, the Fish and Wildlife Service had had a change of attitude and now rather than issuing edicts across the street Albuquerque is saying you will do X. They are actually walking across the street and saying we got a problem here, what do you think we should do? And they are actually managing for multiple species.

Let me ask a second question. One of my concerns is the issue of the protection of all habitat everywhere it is found. One of the issues that has arisen in the southern part of my state is whether or not a particular area is in fact habitat for a particular species when we know that there are literally millions of acres of other habitat for that same species.

It seems to me there is a danger of overreaching and it seems to me that current law creates pure incentives for that overreaching. Indeed, I think the one thing that is wrong with the current law is that it drives Fish and Wildlife Service personnel to the most extreme position. If the issue is do we list or do we not list, the only way they can be criticized is if they don't list.

If the issue is do we create a habitat of 80 acres or 800 acres, the only way that they can avoid being criticized is to create a habitat of 800 acres and everything in that dynamic takes them to the absolute extreme and, oh, by the way, concerned citizens stand-

ing in the middle, otherwise called environmentalists, drive them further and further out at every turn.

Now what effect does that produce over here on the other side where you have private property owners? The effect it produces is not, gee, I am a concerned American, I want my children to have a biodiverse environment to inherit and my grandchildren and their grandchildren, so I want to cooperate; it creates the exact opposite.

And I guess I would like to hear from anybody who thinks that we ought to look at some way to examine whether or not we preserve all habitat for every species and every subspecies wherever it is found and if you don't see a problem with that. Mr. Gordon.

Mr. GORDON. Clearly, I think you are on to something important. Under the current definition of take, it requires in cases for people to manage or not undertake specific activities to affect habitat that may not even be occupied by a species. It may just have the type of tree they prefer.

For example, there is a woman in Texas who for years was struggling to get a permit to build her house and it was either one or two reasons. One was because she lived near some habitat that had cedar in it, and the only other possible reason would have been that she had one cedar tree on her property.

She eventually did get this but only after coming here to testify. The protection has been extended in cases to or theoretically you would be guilty of a take for driving through tire ruts where fairy shrimp have bred when water is collected from rainfall. There is a case in New Mexico, I believe, where the sole existing habitat of something called the Socorro isopod is a 20-meter piece of drain-pipe and a watering trough that one fellow has on his ranch. It is rather extreme in that regard, absolutely.

Mr. BEAN. Mr. Shadegg, can I offer an observation about your remark to the effect that the Fish and Wildlife Service invariably asks for the maximum in protection. There is, in fact, only one peer reviewed study of recovery plans, a study that appeared in Science magazine about a year ago, and the purpose of this study was to assess the recovery objectives in the Fish and Wildlife Service recovery plans.

And the conclusion of this peer reviewed Science magazine article was that the Fish and Wildlife Service systematically sets objectives for recovery that are biologically indefensible because they are too low. Rather than doing as you suggest, setting objectives too high and unattainable and unrealistic, it was the conclusion of this peer reviewed article that they in fact were too low and consistently too low.

Mr. SHADEGG. Well, if that is true, then we better be moving toward compensation. Because they are already effectively taking landowners' land and while to some degree this may be dealt with by the difference between private and public lands and maybe they could get more extreme in their plans for recovery on public lands if they go much further in their recovery plans on private lands, I don't see how we are going to be able to achieve that without compensating people.

I was not going to ask you this quote but the quote from today's Washington Times is in fact attributed to you, Mr. Bean, and it

says despite nearly a quarter century of protection as an endangered species the red-cockaded woodpecker is closer to extinction than it was a quarter of a century ago when protection began.

There may be a technical explanation for that but unfortunately I think the truth is for way too many species the current law has led us to where we are in the same situation for many species. So I am just not convinced and I am pretty well convinced you are not convinced that the current law is working.

Mr. BEAN. Well, let me just say about that statement which is an accurate quote and one I would repeat today, however, the context in which that statement was made was in describing a new approach to red-cockaded woodpecker conservation in the Sand Hills area of North Carolina, an approach with which I was very much involved as a result of working with landowners there over a period of years.

It is an approach that is called now a safe harbor approach. The purpose of that approach was to remove the threat of added Endangered Species Act restrictions on private land use as a result of landowners undertaking actions that would enhance or create habitat for red-cockaded woodpeckers. And, in fact, since that program has been initiated earlier this year, it has been enthusiastically embraced by landowners there.

It is being done under the existing Endangered Species Act. There was no need to amend the law to accomplish that. And, in fact, I believe that as a result of that program there, if it is replicated elsewhere, the statement that I made more than a year ago about the red-cockaded woodpecker continuing to decline will in fact no longer be true in the future.

Mr. SHADEGG. As the result of cooperation of the private landowners. I think that is wonderful.

Mr. BEAN. Under the existing Endangered Species Act, that is correct.

Mr. SHADEGG. I suppose one last open-ended question. For us lawyers open-ended questions are always dangerous. In Arizona we have situations where people use certain provisions of the Endangered Species Act openly acknowledging that that is not their goal. They really don't care about the species they are using to achieve an objective, it is for a different objective.

I will tell you I think that is occurring in many places across America. I think it is undermining the credibility of the legitimate environmental movement because to pervert the law to achieve a different end is not something I think convinces people that people doing that are genuine and as either you or Mr. Irvin as defenders of the current law, are you at all concerned about those kinds of perverse uses where someone takes the law, uses the identification of a species to achieve some totally other—some other end which they acknowledge and which the law, quite frankly, doesn't allow them to get in some other fashion does damage?

Mr. IRVIN. I would be concerned if they were using the law to achieve a purpose that was not designed to protect the ecosystems upon which threatened and endangered species depend. But the Act very clearly provides that that is one of its purposes. Just incidentally it is not—

Mr. SHADEGG. So you can get a species listed to achieve something else as long as it helps the ecosystem?

Mr. IRVIN. If a species warrants listing because of its biological status, it should be listed. And if the ecosystem is being destroyed on which that species depends, it should be protected. It is not just the environmental community that uses these tactics. Let me point out that about a year ago there was a proposal to build a mall in suburban Maryland. Another mall developer actually raised legal issues about that based on environmental laws, not because the developer was concerned about the environment, but they were concerned about competition.

Mr. SHADEGG. If I were you, I would have been as critical of him as I could be because that is not how we ought to be using the laws. If we in Congress write a law to achieve a protection of an endangered species and it deserves to be listed and there is a proper strategy to protect that species, fine. But to pervert that to achieve some other end that the law does not allow or is not intended, I think you open the door for criticism, and I think it is a legitimate criticism. Mr. Stallman.

Mr. STALLMAN. I think the classic case of what you are talking about is in Texas with the Edwards aquifer issue. That is an old-fashioned water fight. The Endangered Species Act law was being used to promote more downstream water for those users down there and take it away from the pumpers on the Edwards aquifer, so, yes, I think your concern is very valid.

Mr. SHADEGG. Thank you. Mr. Chairman, I have finished my questions.

Mr. POMBO. Thank you. The time has expired. I apologize to the panel. I have got a markup going in Ag Committee right now as well and that is why I had to run out. Thank you all very much for taking the time, considerable amount of time, to be here, and this panel is excused.

I would like to call up panel number three. Mr. Chris Nelson, Glen Spain, Keith Romig, Carl Loop, Dr. Stuart Pimm, and the Reverend John Paarlberg. Thank you very much for being here and thank you very much for your patience with us today with our votes that have been going on.

I know there are a couple of you that are not going to be able to stay through the entire questioning period. I would like to call on them first. Mr. Nelson, if you are ready, you may begin.

#### **STATEMENT OF CHRIS NELSON, NATIONAL FISHERIES INSTITUTE, ARLINGTON, VIRGINIA**

Mr. NELSON. Thank you, Mr. Chairman. Actually I got my plans changed but I will go ahead.

Mr. POMBO. OK, go ahead.

Mr. NELSON. OK, thank you. I am Chris Nelson with Bon Secour Fisheries, Inc. in Alabama as well as representing National Fisheries Institute. I am a vice president at Bon Secour Fisheries. It is a family business. I am in the business with my two older brothers and my father. I represent the fourth generation in that business.

We have a shrimp and oyster packing plant. We also unload Gulf shrimp trawlers. I am also the regional vice president for the Na-

tional Fisheries Institute and in that regard I have been working with regional members in the Gulf to discuss the Endangered Species Act reformation and trying to reach some consensus on recommendations for change.

I feel privileged to be here. I appreciate the opportunity and I would commend the Chairman and the other members of the committee on holding field hearings around the country. I know particularly the shrimp industry in the Gulf appreciated the opportunity to come to those hearings and express some of their concerns. These are some of the real people with the real problems in our region.

Mr. Chairman, our industry, perhaps more than any other, depends on a healthy environment. Commercial fishermen have traditionally been strong supporters of environmentalism and government involvement in resource conservation, especially reasonable measure designed to conserve habitat. Mr. Saxton mentioned this earlier and I agree with what he said.

Commercial fisheries in the Gulf of Mexico depend on clean water and wetland nurseries. Water pollution and coastal development, general habitat degradation, threaten practically every commercial important species of fish and seafood in the Gulf. The shrimp industry supports recovery and conservation of sea turtle stocks. We believe that especially from a habitat standpoint what is good for the turtle is good for the shrimp is good for the fish is good for the oyster.

The goals of the Act in this regard are widely supported by fishermen in general. What we in the Gulf cannot support is the misuse of the Act and the precious resources which are being wasted as a result of this misuse. The ham-handed regulations and the resultant endless litigation which we were forced into are examples of such wasted resources and I think I would find some agreement on the environmentalists' side with that.

The reforms proposed in H.R. 2275 are long overdue and will help thousands of families and small businesses struggling to make a living under the increasingly onerous restrictions as a result of this Act. One reform of particular importance to us is the obvious need for more open and interactive planning and regulatory process.

I feel that after spending some time talking with people in the industry, we want to be in the position of being committed to the goals of the Act rather than having to be forced into compliance with the Act, and I think that you will find that effective programs in general start more with commitment rather than compliance.

But this is not happening because the industry feels shut out of many of the planning and regulatory formation processes. We would like to see reform in that area, have it be more open to the public and that science be better peer reviewed. This will give the affected parties more confidence in the process and reduce the cynicism that is at hand.

The new regulatory and planning process proposed in H.R. 2275 is a positive change in this regard. The compensation and incentives part of the bill regarding TEDs. TEDs lose shrimp and some of the fishery closures that are proposed by the agency cost us money as well. The regulatory measures devalue our property and

capital investment in the industry and we feel that fishermen should be afforded the same compensation and incentives as property owners on land are.

We support the measures in H.R. 2275 which address this. We also have some other recommended changes which could strengthen the bill. We feel that the National Marine Fisheries Service authority which currently exists should not be transferred to the Fish and Wildlife Service. We feel that, I am going to have to bite my tongue in saying this, because we have had our problems with the National Marine Fisheries Service, but we feel that that agency has worked more closely with the fisherman and has the necessary expertise.

We also would encourage the use of incentives such as those currently proposed by the shrimp fishery to reduce fishing intensity in areas where turtles concentrate. Currently the bill focuses on land-based incentives and should be broadened to cover fishing. And, finally, more needs to be done to encourage international conservation. Sea turtle species found in U.S. waters migrate and use the water and beaches of many nations.

Multi-lateral standards rather than current unilateral regulations are needed to create a level playing field for all fishermen and foster international cooperation in turtle population recovery. Just this week several western hemisphere nations including the United States are seeking such an agreement and if this effort is successful, we ask that the committee consider including the provisions in H.R. 2275 which would facilitate implementation of the agreement and foster future negotiations.

Again, I appreciate this opportunity, Mr. Chairman. I congratulate you on your efforts to date and I look forward to working with you and the other members of the committee toward improving a law which is of critical importance to my industry. Thank you.

[Statement of Mr. Nelson may be found at end of hearing.]

Mr. POMBO. Thank you. Mr. Spain.

#### STATEMENT OF GLEN SPAIN, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, EUGENE, OREGON

Mr. SPAIN. Thank you, Mr. Chairman, members of the committee. It is a pleasure to be here to testify again before you. I want to acknowledge first off the hard work and difficult task the staff and you personally as Chair have taken on. Perhaps you should have read the fine print before you took the job but clearly I think you are equipped to try to resolve what may be one of the most difficult cultural problems we have today.

I say that before broadsiding the bill. There are some things in the bill that I certainly would support, some streamlining procedures, expedited streamlined access to the consultation process by non-Federal agencies, non-agencies, certainly time lines on recovery programs and so forth.

As you know, PCFFA is the largest organization of commercial fishermen on the west coast. We represent thousands of small family commercial fisherman, many of whom make their living on the salmon. We have suffered enormous economic damage because of lack of habitat protection, and because of hydro power systems that did not take fish passage into account and were designed to extin-

guish whole runs. We have lost approximately 72,000 family wage jobs over the past 20 years and I have cited some of the sources of that. These are independent economic studies.

These were jobs lost not because of the ESA but because of lack of protection that the ESA in the final analysis will afford to our industry to restore those jobs and restore that base. It has been said, well, why do we need salmon in the northwest, why do we need them anywhere? Every time you extinguish a salmon run in Idaho or Montana or Oregon or Washington, you are extinguishing a job and a source of jobs for the future.

It is vitally important to maintain our job base and I don't think we can afford as a nation to export not only our natural resources but the 1.5 million family wage jobs that this nation provides through the commercial and recreational fishery, which amounts to \$111 billion in this economy. Those are the voices that need to be heard.

As to the bill itself—I always use nautical terms hanging around fishermen—it is like a boat where the rigging has been replaced, it has got a new wheelhouse, pilot house, it's got perhaps even a new rudder but there are holes kicked in the bottom of the boat, and you are sinking fast. The holes I would like to outline briefly.

Number one, the definition of species must include the protection of distinct population segments. Without that it is like a medic. (I am a medic, by the way, myself and I am a small timberland owner and a farmer. I come from cattle ranch country in Arizona.) It is like a medic who is told to go rescue a crowd and he is told also he cannot rescue any individual, single population segment of that crowd, i.e., an individual person. You look around and you cannot find anything in that crowd but people.

Species through their range are composed of distinct population segments. You forbid the protection of distinct population segments. Particularly in aquatic species you will lose the species as a whole, stream by stream, watershed by watershed, county and state by state, until you are down to the last few specimens at which point the ESA as it is written in this bill would kick in when it is far too late to do anything but the most expensive, most difficult measures of triage.

The other problem is the overturning of the Sweet Home decision. I frankly think we ought to be blunt about the ESA and say that it does protect habitat, it should protect habitat, and deal with the consequences to minimize the economic impacts on private landowners. A species cannot exist without habitat any more than you, Mr. Chairman, can exist for very long without food and water and shelter. That is what we are talking about.

You remove the food and water and shelter from any member of Congress and they will be dead in a short period of time. Removing and destroying the habitat of a species is just as effective a death sentence as taking it out and shooting it in the back 40.

The central goal of the ESA has been abandoned in the bill, that is, recovery in the wild. For aquatic species they have been replaced with essentially zoo fish, hatchery fish of inferior genetic quality, at the expense of wild stocks.

Hatchery fish are counted as equivalent to wild for population counts. Water allocations are specifically exempted from the ESA



so you can't provide water for the fish and you will have primary reliance on captive breeding and brood stock programs as the conservation measure of choice. This is a death sentence for this nation's fishing industry.

We have problems with TEDs, we have problems with restrictions on all the coastlines, but we are learning to live within the limits of biological sustainability as an industry. We are, I might add, the only industry that is required by law to live within the limits of biological sustainability. Far more of a difficulty for our industry and far more pervasive of job loss, already losing perhaps a million jobs, is habitat degradation over the last 50 to 60 years nationwide.

And in terms of some of the other impacts here, I hear a lot of talking about takings, private property rights. I am a private property right owner. My people own private property. They own boats that have nowhere to fish. They own gear, tens of thousands of dollars of gear that has nothing to catch. They are trying to pay their mortgages and their families on the basis of public property rights.

Where do fishermen go to sue for compensation for the loss of their watershed, their ecosystems, their rivers, their streams? I ask you, if there are private property rights, then there are also public property rights and there are private rights to the use of public property that have to be balanced. Takings has to be balanced in that respect.

I will provide more extensive comments line by line. I didn't have sufficient time to do that, and I am happy to work with staff. You have very good, hard working staff and you have taken on a very difficult task. I would certainly be happy to provide some more comments and work with you on a one to one basis at any time.

[Statement of Mr. Spain may be found at end of hearing.]

Mr. POMBO. I look forward to that. Thank you for your testimony. Dr. Pimm, we are going to have to break in a few minutes but I want to give you the opportunity to give your testimony before we have to take our break.

**STATEMENT OF DR. STUART PIMM, DEPARTMENT OF ECOLOGY AND EVOLUTIONARY BIOLOGY, UNIVERSITY OF TENNESSEE, KNOXVILLE, TENNESSEE**

Dr. PIMM. Thank you very much. Mr. Chairman, thank you for giving me the opportunity to come here this afternoon and talk to you. I speak as a scientist who studies global patterns of biological diversity and extinction. My remarks today are not the official position of any scientific body. Nonetheless, I am confident that the majority of my colleagues will conclude that H.R. 2275 is not scientifically sound, nor I am afraid can we consider it a credible attempt to address the scientific problems in managing biological diversity and preventing extinction.

I think it is unfortunate that none of the current scientific consensus on endangered species management has found its way into this bill. In May this year, the National Research Council of the National Academy of Sciences issued a report on the Endangered Species Act. The Ecological Society of America published its deliberations about the same time. And more recently a distinguished team of scientists including Tom Eisner of Cornell and Professor

Ed Wilson of Harvard and Jane Lubchenco, who is president-elect of the American Association for the Advancement of Science, published their thoughtful reviews on the matter in the prestigious journal *Science*.

Not one of their recommendations seems to have been included in this bill and perhaps under those circumstances I can't present a complete list of the bill's scientific problems within five minutes. Among my major concerns are these. First, the bill's reliance on captive propagation is misplaced. I serve on an international commission that deals with captive propagation and their reintroduction of species into the wild.

Indeed, I believe I am the person who released a bird, the Guam rail, back into the wild following its extinction in the wild. That was the first time that a bird species has been reintroduced into the United States and its territories following its complete extinction. Captive propagation is no substitute for restoring a species to the wild. It is the medical equivalent of relying on heart bypass surgery to address our nation's high incidence of heart disease.

I know from my considerable practical experience that restoration is an extremely expensive last-ditch effort. It fails roughly 90 percent of the time, and it rarely addresses the underlying problems. Our zoos and botanic gardens have the capacity to propagate only a tiny fraction of the endangered plants and animals. Even Noah could protect only the plants and animals of the planet for a few weeks, and he had divine help.

The bill's denigration of computer modeling is quite extraordinary. Computer models provide insights regarding the fate of populations that would take decades to obtain empirically. Such models of the future are an integral part of our society. It is hard to imagine how we could manage without models of the nation's economy, the spread of HIV, and, of course, weather forecasts.

The bill's system of biological diversity reserves does not target areas of maximum diversity, nor does it provide for new reserves. Indeed, only a small portion of existing Federal lands appear to be eligible. Many wilderness areas that are eligible were established for reasons having nothing to do with biological diversity. One example I know well is Hawaii Volcanoes National Park. Its boundaries were drawn to exclude almost completely those areas in Hawaii where most of the rare species are concentrated. Moreover, Federal lands are disproportionately located in western states. We in the east would be disenfranchised.

On the subject of peer review, I have a minor editorial role for the journal *Science* of which you have heard so much. I can assure you that that journal would not be prestigious if we had to name the reviewers of our articles. On the subject of peer review, we are told that only peer review data are admissible. Scientists by our very training are capable of sorting the wheat from chaff. And, indeed, without credible, long-term, but not peer reviewed data, the National Research Council could not have made its recommendations about the management of the critically endangered bird, the Hawaiian alala. Implementing those recommendations has led to one of the most dramatic stories of how the 1973 Act has saved species from the brink of extinction.

Finally, and most importantly, the major cause of extinction is, and will remain, the destruction of habitat. The 1973 Act affirms this. So did the Supreme Court in its decision on the case of Babbitt versus Sweet Home, a decision obviously applauded by those of us who wrote the Brief of Amici Curiae Scientists. The bill's redefinition of harm thus removes the single most significant cause of extinction from the scope of the Act's prohibitions. Thank you very much.

[Statement of Dr. Pimm may be found at end of hearing.]

Mr. POMBO. Thank you. I know that you—am I correct that you are going to have to leave?

Dr. PIMM. I think it is going to be touch and go.

Mr. POMBO. Because we have a vote going on the floor and I did want to make a statement or to point out something that is in the bill and get your response before you did have to leave.

Dr. PIMM. I will try, sir, to reschedule my flight.

Mr. POMBO. Because we are going to have to run. I just want to point out that there are four places in the bill where we talk about propagation of species and in every instance it talks about for release into the habitat to be used as a tool at the option of the Secretary, the biologists, potential captive breeding programs, a description in the recovery area, a description of any captive breeding program recommended for the alternative.

In general, in carrying out this Act the Secretary shall recognize to the maximum extent practical and may utilize captive propagation as a means of protecting or conserving an endangered species or threatened species. In every instance where it is mentioned in the bill, it is talked about as a tool or a possible tool that can be used in a conservation program or a recovery program.

In no place in the bill does it say that that is what we are depending upon to recover endangered species. And I know that a lot of the propaganda sheets that have been passed out have said that that is what the bill does but that is not what it does.

Dr. PIMM. Do you want me to respond to that?

Mr. POMBO. Please do.

Dr. PIMM. I am a scientist. I am not a lawyer and not a drafter of legislation.

Mr. POMBO. Have you read the bill?

Dr. PIMM. I read the bill!

Mr. POMBO. OK.

Dr. PIMM. And perhaps it is my inexperience but I got this sense that captive propagation received rather greater billing than I would feel comfortable with.

Mr. POMBO. One other point on peer review before we have to go. On peer review you say that you would not release the names of the people who peer review your work. Do those people who are doing the peer review in your magazine, in the Science magazine, do they know who has presented the work?

Dr. PIMM. Oh, yes indeed, although that is not—

Mr. POMBO. In the last 20 years esteemed scientists that you listed off, have you ever known the peer reviewers to say that their work was wrong?

Dr. PIMM. Could you run that by me again?

Mr. POMBO. You listed a list of esteemed scientists.

Dr. PIMM. That is right.

Mr. POMBO. In the past 20 years, in the past 10 years, in the past five years, you pick your time period, have the people who peer reviewed their work ever said they were wrong?

Dr. PIMM. You are asking me to disclose confidential information so let me address that. Can I say something very general?

Mr. POMBO. Yes.

Dr. PIMM. Frequently very distinguished scientists, very eminent scientists, receive very harsh and very critical reviews of their work.

Mr. POMBO. Contrary to what you are telling me over the past several months I have met with a lot of scientists and a lot of people in the scientific community and they tell me that one of the problems is that when you have someone who has a reputation, the chances of other scientists saying they are wrong are slim and a lot of times that is the problem.

Now we may have to do something on the language that deals with peer review and the names of those people and how we go about that and I would be happy to work with you on a better way to do that if you think there is a better way to do it but there are problems with the way it is currently being done. And we have to take a break and run a vote. If you can stay, please do, we have more questions but if you can't, I understand that this hearing has gone on a long time so thank you very much, and the committee will temporarily recess.

[Recess.]

Mr. POMBO. We are going to call the hearing back to order. Again, I apologize to all the witnesses for the crazy schedule we have had here today. Keith Romig, if you are ready which I am sure you were about five hours ago, you can begin.

**STATEMENT OF KEITH ROMIG, UNITED PAPERWORKERS  
INTERNATIONAL UNION, WASHINGTON, D.C.**

Mr. ROMIG. Thank you, Mr. Chairman. I work for the United Paperworkers International Union. I am an information officer and among my duties is to respond to environmental issues, statutes, regulations, and issues that impact our membership. As you well know, the Endangered Species Act does so. In addition to speaking on behalf of our 250,000 members, I have been authorized to say that the United Brotherhood of Carpenters and the International Association of Machinists, even though I am not speaking for them today, agree with the gist of what I am about to say.

Our union strongly supports the goals of the ESA but we are extremely concerned about the job losses and economic impacts resulting from the Act. In our view, the ESA has failed to consider these issues adequately and for that reason the law needs to be adjusted. I would like to point out that many of our members have spent their lives working in and around America's forests. Their livelihoods depend absolutely on a strong strategy for preserving the environment.

We do not believe that economic and environmental goals are in conflict, but we do have to resolve conflicts that have developed in the implementation of this Act. In all of the current political posturing and media coverage over reauthorization of this law little at-

tention has been paid to the working men and women who will be so dramatically affected one way or the other by any reauthorizing legislation.

Protecting species and protecting jobs should not and must not be partisan issues. For that reason, I am very heartened by the sense I get from the discussion today that there is some possibility we can move toward agreement. I want to emphasize that when we talk about environmental train wrecks due to some of these problems that it is not an abstraction to our members. When there are environmental train wrecks as in the Pacific Northwest our members are the casualties.

I am here today because pulp and paperworkers throughout the Nation have felt the heavy blow of an unbalanced Endangered Species Act. The problem is most dramatically and obviously illustrated in the ongoing debate in the Pacific Northwest where communities are still reeling from the impact of efforts to protect the Northern spotted owl. The ESA restrictions prohibiting timber harvest activities on state and private lands combined with unfavorable judicial decisions have resulted in closed mills and laid off workers.

To be specific, since 1989 some 212 pulp mills, sawmills, plywood mills and panel mills have closed in Oregon, Washington and northern California. Almost 20,000 men and women who worked in these mills lost their jobs. Communities in the region have seen their tax bases erode as unemployment rises and social services are overburdened. We know, for example, that communities suffering from a mill closure experience a loss in normal commercial business activity.

If there is no money you can't buy things. This is due to the increased unemployment or the lower income for displaced workers. We also know there is a loss in the assessed value of any closed mill as a tax base for basic local government services. And in many communities within the Option Nine area, the regions operating under the Administration's Federal Forest Management Plan, loss of timber revenue ranges from one-quarter to one-half of timber receipts.

In some cases this timber revenue has made up from 35 to 40 percent of the funds required for local government services in an individual county. I have heard from our members that cases of alcoholism and depression have increased in communities suffering from mill closures. In one case, in Roseberg, Oregon, the town was forced by budget cuts brought on by decreased revenues to lay off social service workers even as the need for their services increased. This is absurd.

In Alaska where the timber and pulp and paper industries are operating at the lowest level in years, efforts have been made to further reduce the timber base under the Endangered Species Act to protect two species which have not yet been listed as threatened or endangered, the Alexander Archipelago Wolf and the Queen Charlotte Goshawk. Already, more than 220 men and women, the overwhelming majority of them members of the UPIU, lost their jobs in Wrangell when the sawmill there closed its doors last year.

Additionally, two sawmills, one in Ketchikan and the other on Annette Island, shut down because of a lack of fiber and chip sup-

ply. Unless Congress makes necessary changes to the ESA to achieve a balanced approach toward species protection, we will see further job loss in the small communities in southeast Alaska as well as in other parts of the northwest.

Indeed, I want to point out that most of the communities hit hardest by the effects of this law, the current ESA, are small rural towns. A loss of several hundred jobs or even a few dozen in a small community can be an absolute disaster. When a mill closes, the whole town suffers. Too often and for far too long, we have seen the livelihoods of these men and women, our members and others, run into inflexible legislation or unbalanced Federal resource policy.

We need to make changes to the ESA that avoid these mistakes and take the human element into consideration. The UPIU supports the principles contained in H.R. 2275 as a reasonable approach or certainly the beginning of a reasonable approach to making the necessary adjustments to the Endangered Species Act. In our view, these principles provide sound environmental protection while allowing for the consideration of the economic and social effects of species protection early in the listing process.

We look forward to working with the committee and with other interested groups to refine the legislation that finally comes out of the Congress so that the President will be able to sign it and so that we can have the Endangered Species Act reformed this year. Our members cannot afford more train wrecks.

[Statement of Mr. Romig may be found at end of hearing.]

Mr. POMBO. Thank you. Mr. Loop.

**STATEMENT OF CARL LOOP, VICE PRESIDENT, AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C.**

Mr. LOOP. Mr. Chairman and members of the committee, my name is Carl Loop. I am President of the Florida Farm Bureau Federation and Vice President of the American Farm Bureau Federation, the largest organization of agriculture in the nation. I appreciate the opportunity to present the views of the Farm Bureau on the reauthorization of the Endangered Species Act.

And I wish to thank you, Mr. Chairman, and Representative Young for your authorization of the legislation that is before us today. Reform of the Endangered Species Act has been a priority for the Farm Bureau for several years. The current Act is not working, not working for species or for farmers nor ranchers.

That is why several thousand Farm Bureau members from across the country attended the hearings held by ESA task force early this year. Clearly, the time has come for constructive changes. The Farm Bureau supports H.R. 2275, the Endangered Species Conservation and Management Act. It is a positive step in the right direction toward establishing a common sense policy on how we protect species in this country and protect the rights of American citizens.

Our written statements outlines the reasons for our support along with several concerns we have with the legislative proposal. But I must emphasize that the primary reason the Farm Bureau supports this legislation is that it recognizes the rights of citizens to property. It is only fair that the protection of endangered spe-

cies, a program of public interest should be borne by the public as a whole, and not those landowners unfortunate enough to find species on their property.

This concept will do much to help establish a better relationship between landowners and agencies who are charged with protecting wildlife and plants. We support the approach taken in Section 101 of the bill. However, we are concerned that landowners must pay 20 percent tax on the value of that property before compensation is triggered. We realize that this may be a political decision. However, from any environment a 20 percent reduction in equity is difficult to live with.

Secondly, we are concerned that payment under the bill are limited by annual agency appropriations and may result in landowners who are entitled to compensation under the law unable to actually receive their compensation in a timely manner. Mr. Chairman, the Farm Bureau also supports amending the ESA so that a landowner may modify his land without becoming subject to the harm provisions of the Act.

Adoption of this concept contained in the original ESA will go a long way toward removing most of the problems and concerns that private landowners have with the way the Act is implemented. The current prohibition against habitat modification narrowly drawn but broadly applied represents ultimate control over private land use by the Federal Government.

Current applications of the harm definition has created a series of disincentives for species protection by landowners. While the creation of a critical habitat reserve program is not contained in H.R. 2275, I would like to comment on the CHRP program. This concept was developed by the Farm Bureau some years ago. We believe it is a landowner's incentive that is practical and necessary. We like the mechanics of the proposed program in terms of participation incentive and duration.

However, we ask that Congress establish the program under the Department of Interior and not USDA. Interior has jurisdiction over endangered species and overlapping jurisdiction only creates problems and confusion. Secondly, the program would be limited as to who or what type of habitat will qualify. We have suggested that the program be limited to critical habitat in order to cover only the habitat that is necessary for the species.

This bill makes no such limitations and would even apply to candidate species habitat. Since the program will not have unlimited funding, it is very important that to be effective in protecting the species, this is the most important part of protecting the habitat. Lastly, the program must address the question of what happens at the end of a contract period. The bill should specifically allow the landowner to terminate a contract at the end of the period and to use his property for other purposes without fear of civil or criminal penalties.

In conclusion, Mr. Chairman, H.R. 2275 contains many of the principles that the Farm Bureau believes should be a part of ESA reauthorization. We ask that you continue to seek additional incentives for property owners under the ESA. Farmers and ranchers can and should be part of the effort to protect species. We have seen that an Act that wields a regulatory stick will fail but I assure

you that an Act with positive incentives and good common sense will rightly earn the cooperation of farmers and ranchers in protection of endangered species in our nation. Thank you.

[Statement of Mr. Loop may be found at end of hearing.]

Mr. POMBO. Thank you. Reverend Paarlberg.

**STATEMENT OF REV. JOHN D. PAARLBERG, REFORMED  
CHURCH IN AMERICA, NEW YORK, NEW YORK**

Rev. PAARLBERG. Thank you, Mr. Chairman. This has been a long day but for me a very worthwhile and educational experience and I hope that in the few minutes remaining I can also contribute something worthwhile to this process. I am very grateful that the committee has seen fit to make room in these hearings for a voice from the religious community, an indication, I think, that you recognize that the issue before you is not simply a matter of politics or economics but that it touches on the very deepest of human values.

Indeed, this issue has to do with the very nature of what it means to be human. In Biblical terms what it means for us to be creatures among other creatures and yet creatures created in the very image and likeness of God. I am an ordained minister in the Reformed Church in America, one of the oldest Protestant denominations in this country, a denomination that participates in both the National Council of Churches of Christ Eco-Justice Working Group and also in the Evangelical Environmental Network.

Each of those groups is also a part of a broad interfaith coalition known as the National Religious Partnership for the Environment. All of our faith traditions recognize and celebrate creation as the gift of a wise and loving creator. "O Lord, how manifold are your works!" sings the psalmist, "In wisdom you have made them all; the earth is full of your creatures." For the psalmist and for every person of faith, I think, the astonishing variety of life on this earth is a cause for wonder, praise, thanksgiving and reverence.

Every creature is in some sense seen as an indication of the power, wisdom, love and continuing care of a creator. As one Lutheran theologian put it, "I have never been able to entertain a God-idea which was not related to the fact of chipmunks, squirrels, hippopotamuses, galaxies, and light-years." Moreover, the Biblical tradition affirms that humankind occupies a very special and unique place in creation.

Of all the creatures only humankind is created in the image of God, made a little lower than the angels, and given dominion over the other creatures. And that concept for our debate, I think, of dominion is very important. Old Testament scholar, Walter Brueggemann, has said that the dominion here mandated is with reference to the animals. The dominance is that of a shepherd who cares for, tends, and feeds the animals. The task of dominion has to do with securing the well-being of every other creature and bringing the promise of each to full fruition.

The human person, he says, is ordained over the remainder of creation, but for its profit, well-being and enhancement. The role of a human person is to see that creation becomes fully the creation willed by God. If I could just mention one other Biblical example in the second creation account from the Book of Genesis. Man is



placed in the garden to till it and to keep it. Those words in Hebrew to till and to keep are elsewhere translated in the Old Testament as to serve and to protect.

So the human person is charged to keep the garden, to serve and protect creation the way the Lord keeps us. The Endangered Species Act of 1973, although far from perfect, has been one important way we as a people have sought to exercise our God-given responsibility to serve as the guardians and protectors of God's creation. The proposed bill, it seems to me, seems to abdicate that responsibility in some significant ways.

Briefly, the protection and preservation of species' habitat is seriously jeopardized. We have talked about that already today. That seems to make no sense to me either theologically or scientifically. The psalmist celebrates God's habitats, the variety of habitats as much as he does the variety of creatures that occupy those habitats, and scientists will tell us that the critical need in preserving endangered species is to protect their habitats.

Secondly, the bill appears to abandon the long-standing recovery goal for listed species. By choosing a conservation objective for each species, the Secretary would no longer be required to attempt to recover those species, and it is inappropriate, I think, unwise to assume that any single individual or agency has the authority to decide whether or not one of God's unique, unrepeatable creations will now become extinct.

And, thirdly, the issue of compensation for private property owners, something that I think needs to be done and is very helpful in many cases but I would raise a note of caution. Care for God's creation is such a fundamental human responsibility that I don't think we want to get in the position of saying that in every case a property owner must be compensated for doing what he or she should be doing in the first place.

I support the right to own private property but I also recognize that it is always tempered by our responsibility for the common good and by our responsibility before God who alone is the absolute owner of all things. Creation does not belong to us, it belongs to God, and we are not the lords of creation, we are but under-lords. Speaking out of my own Christian conviction, there is only one Lord of creation and that Lord is Jesus Christ, in whom, through whom, and for whom all things in heaven and on earth were created.

If the Endangered Species Act needs to be fixed, then by all means, fix it, but please don't undo it. The proposed bill, if enacted as written, I fear would cause serious and perhaps irreparable damage to God's creation. It abdicates our responsibility of careful and loving dominion over God's creation and I fear it assumes a power and an authority for humanity that rightfully belongs to God alone.

I hope and I pray that as you consider this legislation, you will consider ways that it might help us as a nation become not the usurpers of God's power, but rather the instruments of God's tender love and care for all that God has made. Thank you, Mr. Chairman.

[Statement of Rev. Paarlberg may be found at end of hearing.]

Mr. POMBO. Thank you. I know Mr. Nelson is just about ready to run out the door but before you run out the door, we heard testimony earlier today that the shrimpers on the Gulf Coast were having a record year. Could you comment on that?

Mr. NELSON. Yes. The shrimp catch has been good. It is a cyclical harvest and it has been about five years since we had a good harvest above average so it is not unexpected. It is not as good as it could be without TEDs though, I will add.

Mr. POMBO. In reference to the TEDs, have the shrimp industry, the shrimpers, made recommendations to National Marine Fisheries on alternatives to the TEDs that would preserve sea turtles that would not have the same impact as the TEDs do?

Mr. NELSON. Yes. There have been a number—from a number of different angles you can look at that. There have been a number of TED designs that have been proposed that it is arguable exactly what the results of the testing were. We would maintain that the testing of these designs showed that they were effective and the agency has disagreed with us. One of the more recent offerings from the industry, however, has been an alternative management program that would give the fishermen incentives to not fish so intensively in areas where the turtles are more highly congregated and this is areas primarily west of the Mississippi River, off Grand Isle, Louisiana, for instance, and in areas of Texas.

And it is now out for public comment, I believe, but it was a long bumpy road to get it recognized by the agency and out for comment and given due consideration but I think it certainly is a good proposal and in principle it is supported by the Gulf industry.

Mr. POMBO. You heard testimony as well that stated that the TEDs worked just fine. Would you agree with that statement?

Mr. NELSON. No.

Mr. POMBO. Do they work to save the turtles?

Mr. NELSON. The TEDs work just fine if you use them in areas where the bottom is hard and there is very little debris. There are areas of Florida, for instance, and on the east coast of the United States where they work pretty doggone well, and I think that the willingness of the fishermen in, let's say, Georgia and South Carolina, they have been more willing to implement these devices because they work better in those areas.

In the Gulf we feel that we lose between 10 and 25 percent of the catch depending on what your conditions are, time of year, weather conditions, and the debris that you would encounter.

Mr. POMBO. Mrs. Chenoweth, did you have any questions of Mr. Nelson before he had to go and before we took a break? Go ahead because he is going to have to go.

Mrs. CHENOWETH. I just had one comment for Mr. Nelson and I think that he mentioned opening the process up for public comment and I think that is extremely important. I was so glad that you mentioned that because the only way we can do that is through the NEPA process and to keep the NEPA process alive. And I think it is so important that the public who will be impacted by a decision have input into that decisionmaking process as NEPA was purposed to do.

And that may sound strange coming from a Republican but I want to see the NEPA process open up and I appreciate your catching that point. Thank you.

Mr. NELSON. Thank you.

Mr. POMBO. Mr. Gilchrest. Did you have a question?

Mr. GILCHREST. Just a quick comment. Your testimony seemed to lead to the fact that turtles and other species are important to preserve by catch. All these technical advances that we can create in a cooperative manner to preserve the turtles, to limit the bycatch I think is something that we are all working for.

Mr. NELSON. Thank you, Mr. Chairman. I would agree to answer any questions that could be submitted in writing.

Mr. POMBO. Thank you, and I am sure there will be further questions. The committee will again temporarily adjourn.

[Recess.]

Mr. POMBO. I call the hearing back to order. And Mr. Nelson left. Mr. Spain, in your experience in the fishing industry in the Pacific coast, do you believe that we can develop a bill which handles the problems that are associated with land-based species and aquatic species so that it is not an either/or proposition?

Mr. SPAIN. In a nutshell, yes, and I would like to explain why, if I might have about 30 seconds, and also some of the problems that clearly you are going to have in drafting. Every species is different. They have different habitat needs, they have different behavioral patterns. Aquatic species even among themselves are different so you have some basic problems. I think the best approach is looking at habitat and trying to protect habitat and creating some agency flexibility in recovery planning so that they are not locked into something that is inapplicable.

Much of the language here, much of the smoke and hysteria frankly has been around spotted owl issues. They are vastly different in their behavior and vastly different in their needs from aquatic species. Fish can't jump over ridge tops. They are not widely migratory. They are tied to the streams that they live in so you have to protect those streams. You can't have protection in this stream that really is protection for another stream and expect the fish in the first stream to exist. That is one of the problems.

But I think, yes, we can draft a bill that takes into account the variability of species, the variability of their needs, but we have got to do it in a way that does three things. Number one, create some flexibility for the agencies to manage this problem; number two, create a much greater public input from the bottom up so that people in the local community, number one, come up with solutions, and, number two, buy into the solution; and, number three, we've got to have much better research so that we have got the best available science.

One of the problems that I see is that we don't have enough funding by far to do the job that we need to do without creating dislocation, and that is part of what we got here.

Mr. POMBO. We attempted to address exactly what you brought up and I know that in previous testimony and in discussions that we have had on this issue those are the issues that we tried to address. And we may not agree on exactly how you get there but I think we can agree on what the issues are. But you have also

heard testimony earlier today criticizing our process for bringing more people in as being cumbersome, as delaying the inevitable, and that we shouldn't bring people in to the system.

You have heard testimony here today that by making the changes that we make to try to bring in better science that we somehow jeopardize the peer review process and the peer review process that is going on now is virtually non-existent and what you are well aware of and the problems that we have had in the Pacific Northwest.

But the difficulty that we have in trying to put those together is that we may agree that those are important issues but we will be criticized for putting those issues in and for trying to address those.

Mr. SPAIN. That is correct. That is also the fine print in the contract that you signed when you raised your hand and were sworn in. That is one of the problems, you ought to be more specific in the future.

Mr. POMBO. Well, and I don't mind that but this is a very important issue and I think that we do have to come to a solution. I don't think we have time to wait. Mr. Romig stated that his people can't go another year like this and he is absolutely right. I mean, my farmers at home, you know, the timber guys, the people that work in the mills, they can't go another year. This is something we have to do and there are tough decisions that have to be made.

I appreciate the effort that you have put in to this process realizing that we are not going to agree on everything but I do appreciate greatly the effort you have put in. Reverend, another part of your job, I would assume, is to counsel and console your parishioners as well. And I think that if the people that belong to your church that you saw every day were the union members from Mr. Romig's organization who had lost their jobs and all the problems that the Pacific Northwest faces today, that the Southeast faces today, that the Central Valley in California faces today, and had heard the stories that I have heard and the problems that are going on there, you may still feel exactly the way you do about God's creation and God's earth but I think you would look at it and say we have to do something here because this is just not working for another of God's creation and that being the human being.

And we have to be able to put a balance so that we do recognize that humans are part of God's creation and that humans are part of the environment. And so often we try to pretend that human beings don't exist and that if we shut down our forests or shut down our farmlands or tell our shrimpers or our fishermen that they can't fish anymore, that that's going to be great for species, that is going to be great for wildlife but we are ignoring the fact that they suffer real problems.

And I am sure that the other gentlemen that are sitting at this table, whether they agree or disagree with my bill and our attempt to solve the Endangered Species Act, will tell you that the stories of pain that the people in their industries are suffering are very real and are not anecdotal stories that were made up to prove a point.

And Mr. Spain has spent a great deal of time explaining the difficulties that the fishermen in the Pacific Northwest have gone

through in the past year. That is very real pain. That is very real to each and every one of those people. It may not matter in New York, it may not matter in the east coast where they don't have that problem but to his people it matters a great deal.

Rev. PAARLBERG. I am not denying that it matters and I am not denying that there are difficult choices that need to be made on occasion. I think what is not said often enough and fortunately we have heard some of it today is that there are times when the Endangered Species Act has helped to protect jobs and I think that also needs to be said.

I know that there are times when it also has worked to the detriment of workers and I am not saying that the Act as it is written is perfect by no means. It does need to be changed. I am just raising a word of caution that economic value is not the only value and we need to do the hard work of working out those balances.

Mr. POMBO. Well, I have spent the past ten months doing a lot of hard work in drafting this proposal and in no means has anyone shirked their duty in doing the hard work that is necessary.

Rev. PAARLBERG. As someone once said, as a preacher my job is to proclaim "Let justice roll down like waters" and you work out the details of the irrigation. You have the more difficult task.

Mr. POMBO. That is fine and I understand from where you come on this issue and it is really hard to disagree with what you are saying but I just want you to understand that a lot of the parish priests and ministers and reverends from my district have talked to me about the need of doing something about the Endangered Species Act because what they see every day in carrying out their duties as ministers in their area and they see very, very real pain and suffering that is happening, and they want us to do something. They really want something to happen and from that perspective, I just would like to bring that to your attention.

Mr. Loop, you have told us that the Endangered Species Act is a very important issue in the state that you come from and the conflicts that you have seen arise. Can you tell me whether the cooperative agreements that we have outlined in the bill, in the series of bills that we have introduced, what effect those would have on the ability of the farmers and ranchers from your state to cooperate in a better way with the Endangered Species Act?

Mr. LOOP. Mr. Chairman, I think it would have a great impact and let me give you an example of the Florida panther, our state animal. About two years ago, Fish and Wildlife got together with the other agencies and drafted a plan to save the Florida panther without any public input, without any outside, and when we first heard about it we thought we had a responsibility to involve the private landowners, so we set up a town meeting.

This was one of those town meetings after you did it, you probably wished you hadn't because we almost had a row because what they were trying to do or what they wanted to do was to make this plan that they had drafted work to put another 1.2 million acres of private land into this plan along with 3 million acres that the government owned.

And this didn't work and as a result of that, the Florida Farm Bureau put together a program, we called it the Perfect Partnership. The purpose of this was twofold. First of all, to educate the

public of the value of rural lands to wildlife habitat, also to get farmers to look at what they might do on their property to provide wildlife habitat and what kind of incentives that would take to do that.

Since that time, we have done a lot as far as public service announcement and publicize this, had workshops, town meetings and everything. And we have seen the private landowners, the agencies, the public and the environmental groups come together. And we haven't finished this yet but we feel like this is going to have a big impact and as people work these problems out, we find there is a lot more in common than they are apart.

So I think the cooperative management agreements in your bill would be right along what we are doing and I think it would offer a lot to bring this old issue together.

Mr. POMBO. At a previous hearing we had a Dr. Simberlock from Florida. I believe it is Florida State. Yeah, Florida State University, who testified, and one of the issues he covered was the biodiversity in Florida, and Florida is rather unique in its biodiversity because of its makeup. But he testified that he could protect—he felt you could protect about 98 percent of the species on the endangered species list in Florida with less than 100,000 acres, that the biological area in Florida.

And he said that there were a few that he couldn't do because of their range, one of those being the Florida panther. Something I wanted to show you. I will pass this down to you. But this, if you set up these biodiversity reserves that would include the state and the Federal lands that currently have conservation easements on them, this is what the map would look like.

And obviously because there is more land in the west that is federally owned, it would be heavily weighted toward the west, but you can also see throughout the country there would be areas that would be protected. And in your state of Florida there are several areas that are either federally or state-owned. They are protected. And this does not include privately-owned lands that are held in a conservation easement or a conservation status.

And I believe that if you had the cooperative management agreements on private property the state and federally-owned lands as held in a conservation status that you would do a much better job in protecting wildlife than what we are currently doing. How would you respond to that?

Mr. LOOP. I certainly agree with that and I think not only on the Federal lands or government lands but we have got a lot of people that would like to cooperate but, you know, regulatory agencies coming out with an arrogant dictatorial attitude has turned a lot of people off.

We did a survey and I asked landowners what would be the incentives that they would like to see that would make them, entice them, to put land into wildlife habitat. Much to our surprise it wasn't the financial part. The number one thing they wanted was relief from regulatory agency and be able to have some certainty that they could continue to operate that farm that they could afford to make the investments and do the things that they need do in a daily operation of their business and that seemed to be—and this cloud that is over them, it affects their ability to borrow, it affects

their ability to expand their operations and the uncertainty is just difficult to live with.

Mr. POMBO. Thank you. Thank you very much. Final question, Mr. Romig. A lot of the testimony that we have heard today, a lot of the debate has centered around private property and habitat and yet you represent, I guess, a different point of view in terms of the people that are affected by the Act. You stated, I believe, in your testimony that there were 212 mills that closed?

Mr. ROMIG. That is correct.

Mr. POMBO. And over 20,000 jobs?

Mr. ROMIG. Approximately, yes.

Mr. POMBO. And is that just in the Pacific Northwest?

Mr. ROMIG. That to the best of my knowledge is specifically in the Pacific Northwest.

Mr. POMBO. Do you have figures on the rest of your industry for the rest of the country as well or did you just concentrate on that particular problem out there?

Mr. ROMIG. I don't believe the number has been researched in the same way in the rest of the country as it has been in the Pacific Northwest because of the intensity and longstanding nature of the problems up there.

Mr. POMBO. I know because of other testimony that we have received at this hearing as well as previous hearings with the red-cockaded woodpecker and other endangered species throughout the northeast and the south that they have had similar problems.

Mr. ROMIG. Based on what I do know, there have not been any pulp and paper mill closures in the southeast related to this. I am not up enough on sawmills in that region.

Mr. POMBO. What about Arizona and New Mexico?

Mr. ROMIG. We represent very few people there and the mills we do represent are still operating.

Mr. POMBO. OK, well, thank you very much. Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman. Reverend Paarlberg, I was very interested in your comments. You opened your comments with a very interesting scriptural quote which I think was from Psalms 8.

Rev. PAARLBERG. Psalm 104.

Mrs. CHENOWETH. It was very similar to the one in Psalms 8 which says, "Oh, Lord, how excellent is thy name in all the earth." And I think I share with you the sense of humility that that same psalmist who wrote up above and "when I consider the heavens and everything that he has created, the stars and the moon" and man, you know, there is such a great sense of humility.

But then it goes on to say that he made man to have dominion and to care for all the works of the earth, including all the sheep and the ox and the beasts and the fowl and the fish and everything. And I take that as a very direct command to be very, very good stewards that we were given to steward, much like what you said about the shepherd.

But I think Psalms 8 and Psalms 104 are very close there but I think that we are supposed to be the stewards and I found it very interesting that in the Sweet Home decision that Supreme Court decision actually took that command away after years and years of functioning in a balance of understanding.

Rev. PAARLBERG. I am not sure. I don't know the details of that decision but as I understand it that was a decision that served to protect habitat for the very creatures that God has asked us to care for. I would see that as a means of exercising careful dominion and stewardship. We can't care for God's creatures unless we also provide habitat for them.

Mrs. CHENOWETH. I think it involved a plaintiff who was an 80-year-old lady who wanted to be able to harvest some trees so she could acquire money to be able to live reasonably comfortably and they found a pair of spotted owls within that 4,000 acre grid and so she was not able to utilize her property.

But I did want to ask Mr. Spain, you spoke about hatchery species not having the same gene pool as natural fish species or having an inferior gene pool.

Mr. SPAIN. If I can answer that question. Hatchery fish are no more like wild fish than a tame turkey is like a wild turkey. They have over the years made serious mistakes in genetic intermingling and to some degree the hatchery programs that we have now in the northwest have contributed to the loss of wild runs.

That is being reformed now. We know a lot more about genetics than we ever did before. Our organization has worked with hatchery programs. We have managed and funded hatcheries. We have also criticized some hatchery programs so we are neither pro nor con hatchery but it is a tool. It is well known though that hatchery fish have nowhere near the survival rate of wild fish and you simply cannot, simply cannot, replace the wild stocks with hatchery fish.

For one thing, the genes that support those hatcheries have to be continually replenished. Those can only come from wild stock.

Mrs. CHENOWETH. The genes have to be continually replenished?

Mr. SPAIN. Yes, they do. And that is because there is genetic drift in the hatchery stock. They become much more dependent on hatcheries than on wild environmental factors and they become basically less and less able to adapt to life in the wild unless their gene pool is continually replenished. That is true of almost every agricultural crop, by the way. And the source of those genes must be wild stocks that have adapted through millions of years to survive.

Mrs. CHENOWETH. Well, I would love to talk to you about the hole in the ozone, Mr. Spain.

Mr. SPAIN. Well, that is a different issue. By the way, one comment—

Mrs. CHENOWETH. Wait a minute, I have to control the time, please. I do want to say that the hatchery fish have the same genetic pool as do wild fish and there is nothing in the Code of Federal Regulations that distinguishes a fish that is reared in a hatchery as far as its gene pool.

Mr. SPAIN. I would refer you to—

Mrs. CHENOWETH. Gene pooling is the criteria in which species and subspecies have been listed under.

Mr. SPAIN. I would be happy to continue the dialog on that and supply you with some information. By the way, it may perhaps ruin your day to know that we agree on the NEPA issue and that you and I are both struggling to open the process and make it less



bureaucratic in the ESA. I think that goes a long way toward resolving some of these problems. I wanted to comment on that.

Mrs. CHENOWETH. Thank you, I appreciate it.

Mr. SPAIN. It is nice to find common ground.

Mrs. CHENOWETH. I appreciate that comment. When you fish, do you ever catch salmon?

Mr. SPAIN. Well, right now, as you know, most of the fleet in the northwest is closed down largely because although there are abundant chinook runs, we can't catch those because of the danger of catch of depressed runs, coho. Salmon used to be the work horse for the entire west coast fishing industry. The declines over the last years have been directly resulting in some 72,000 jobs lost over the last 20 years but it is not the ESA that is the problem.

There are no coastwide listings of any of those fish. There are a few listings relatively recently in the Columbia and in the Sacramento. The problem is the declines. That is the issue we must address. The ESA is a very poor tool for addressing those declines but it is a last resort, the only tool that we have left.

Mrs. CHENOWETH. Wouldn't you agree that last year though in the commercial fishery industry that they enjoyed a record catch of salmon?

Mr. SPAIN. Not in the northwest. In central California and those restored runs, frankly, are attributed primarily to ESA driven water reforms in the Central Valley.

Mrs. CHENOWETH. ESA driven water reforms in the——

Mr. SPAIN. Yes.

Mrs. CHENOWETH. What about the fish that migrated up around the Alaskan coast. There were record catches of salmon up there.

Mr. SPAIN. Well, that is in Alaska. Those mostly come from Canada where they have taken much better care of their habitat.

Mrs. CHENOWETH. I think that it is very interesting that the Endangered Species Act has never addressed gill netting.

Mr. SPAIN. Certainly it does. For instance, the Columbia River gill net fleet is probably one of the most studied, most permit laden catch in the country. There are at least 17 different agencies that have input into the permits for those. Every effort is made to reduce and minimize or eliminate bycatch.

Now gill nets are very much part of the process as well. Those fleets, those boats don't sail without a take permit under Section 10.

Mrs. CHENOWETH. What impact do you think that the El Nino has had on the record return of salmon that we are now beginning to experience in our west coast rivers and streams?

Mr. SPAIN. El Ninos are cyclical. When ocean conditions are hostile, it does cause decline so when they are more favorable it causes better survival rates. The problem is if you superimpose a declining habitat year after year over natural fluctuations you have periodic crashes.

Salmon evolved for millions of years to survive El Ninos. They did not evolve to survive more or less total destruction of their inland habitat. We do have to address that issue. El Ninos will never go away but if we depress the stocks so close to the edge under normal conditions, then when we get a downturn in ocean conditions,

they crash and they get into a situation which we are beginning to see where there are too few fish to replenish themselves.

Even though the fish are there they can't find each other if it takes a mile or two miles or three miles of streams to do so. El Ninos have an impact, no question about it, but we need to control those factors that we do have control over. And in terms of stewardship we have the obligation, I believe, morally and legally to undo what damage we have done.

Mrs. CHENOWETH. You didn't answer my question when I asked you if you ever catch salmon.

Mr. SPAIN. I don't fish. I do mostly this. I wish I were fishing.

Mrs. CHENOWETH. Oh, I see. Well, do members of your organization catch salmon?

Mr. SPAIN. Certainly. Our members are from every port from San Diego to Alaska. Many of them have in the past participated in the salmon fishery. Many of them now have to regear if they can and try to get into other fisheries.

Mrs. CHENOWETH. Isn't that a violation of the Endangered Species Act?

Mr. SPAIN. No, it is done pursuant to an incidental take permit in those areas where it is required.

Mrs. CHENOWETH. That has nothing to do with Section 10A. You may not—

Mr. SPAIN. I am talking about Section 9.

Mrs. CHENOWETH [continuing]. harm, harass, injure or kill an endangered species. The fall, the summer and the spring chinook have been listed as well as the sockeye. Now don't tell me they are not being commercially fished. They are. I know it and you know it.

Mr. SPAIN. If you look at the section, you will find that the exemption is if there is an incidental take permit, those stocks are caught, if at all, as bycatch pursuant to an incidental take permit where every effort, every effort, is made to protect them.

Mrs. CHENOWETH. So every fisherman that is catching salmon has an incidental take permit with an entire process, the biological opinion and everything that is attached to the giving of an incidental take permit for every fisherman that is catching a salmon.

Mr. SPAIN. Those are programmatic and they are issued through the agencies.

Mrs. CHENOWETH. I think there is one agency that issues an incidental take permit and I don't believe, sir, that every fisherman acquires an incidental take permit.

Mr. SPAIN. Not individually, no. It is programmatic.

Mrs. CHENOWETH. Do you know—you talked about the record or if we cause harm to the existing fish runs in Idaho we are harming the entire stock. Let me tell you something about the listing of the sockeye salmon. The sockeye salmon is an anomaly by birth of a genetic pooling of two kokanee, landlocked kokanee, and our state fish and game for years diminished the population of the kokanee in the lakes in preference for trout so our fish policy in Idaho absolutely ran against what came later in the Endangered Species Act.

And so what we need to do is everyone needs to get together with the same long range goal and not punish people because we diminished the parent stock in the lakes, the high mountain lakes, in

preference for fly fishing. And then Idaho people have had to suffer.

Mr. SPAIN. I couldn't agree with you more. That is one reason all the agencies have to be required to be at least on the same page in terms of protections.

Mrs. CHENOWETH. You know, as far as genetic work with genes, it is very interesting that when we passed the Clean Water Act we needed to clean up the Great Lakes and get rid of a certain type of algae which the Pacific salmon would adapt to very easily but how could we adapt the Pacific salmon, an anadromous fish in the west, to the Great Lakes. We did it. We did it by the chemical imprinting process.

We can do it all over this nation when we see people with great minds, people who have studied fish, people like yourself, and various other scientists come together to make it happen right. And, you know, my concern is that there is a consensus that while we let the salmon live and the best salmon you can catch nowadays is in the Great Lakes and it was artificially originally stocked and that salmon gene tradition was fooled by chemical imprinting.

I think we can let the salmon live very well as well as our workers of the forest and everyone else and I think there is a great future if we will just work together.

Mr. SPAIN. Well, we must work together. That is absolutely required and, frankly, one of the reasons we are here is we want an ESA that requires everybody to work together and preferably one that isn't regulatory in nature insofar as it takes a proactive approach. One of the problems with a reintroduction program is for salmon in the west coast, each salmon genetic strain fits into its watershed like a lock and a key fit together.

It is very difficult to transplant from one to the other. It usually fails. And it is very expensive. Mother Nature can make a fish better, faster and cheaper than the Corps of Engineers any day and I think we owe it to ourselves as an economy and as a region to try to prevent harm, you know, the Hippocratic Oath, do no harm first. I think we need to do no harm before we rely on trying to undo damage that is irretrievable. So let's work together on that.

Mrs. CHENOWETH. Thank you, Mr. Spain. Thank you, Mr. Chairman.

Mr. POMBO. Thank you. I would like to thank the panel for your perseverance and your patience with us today. There is a lot going on back here right now and we are trying to keep ahead of it all but I appreciate a great deal you being here and sticking around for our questions, and would like to remind you that if there are questions that members of the committee have that they will present to you in writing and if you could provide a response to the committee in writing, it would be greatly appreciated, and thank you very much for being here.

[Whereupon, at 6:28 p.m., the committee was adjourned; and the following was submitted for the record:]

104TH CONGRESS  
1ST SESSION

# H. R. 2275

To reauthorize and amend the Endangered Species Act of 1973.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 1995

Mr. YOUNG of Alaska (for himself, Mr. POMBO, Mr. TAUZIN, Mr. BREWSTER, Mr. DOOLITTLE, Mr. HANSEN, Mr. DOOLEY, Mr. CALVERT, Mr. CONDIT, Mr. STENHOLM, Mr. STUMP, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. FIELDS of Texas, Mr. KOLBE, Ms. DANNER, Mr. HUTCHINSON, Mr. HAYWORTH, Mr. HASTINGS of Washington, Mr. BONILLA, Mr. MCHUGH, Mr. DORNAN, Mr. HERGER, Mr. EVERETT, Mr. TAYLOR of North Carolina, Mr. PACKARD, Mr. CUNNINGHAM, Mr. THORNBERRY, Mr. HAYES, Mr. ROYCE, Mr. COMBEST, Mr. COOLEY, Mr. SALMON, Mr. BONO, Mr. BAKER of California, Mr. HUNTER, Mr. LEWIS of California, Mrs. CUBIN, Mr. MCKEON, Mr. RADANOVICH, Mr. RIGGS, Mr. ROHRABACHER, Mrs. SEASTRAND, Mr. THOMAS, Mr. ALLARD, Mr. SCHAEFER, Mr. MICA, Mr. CHAMBLISS, Mr. COLLINS of Georgia, Mr. LINDER, Mr. BAKER of Louisiana, Mr. CRAPO, Mr. EWING, Mr. BURTON of Indiana, Mr. HOSTETTLER, Mr. MCINTOSH, Mr. ROBERTS, Mr. LEWIS of Kentucky, Mr. BARTLETT of Maryland, Mr. KNOLLENBERG, Mr. EMERSON, Mr. HANCOCK, Mr. SKEEN, Mr. PAXON, Mr. SOLOMON, Mr. BALLENGER, Mr. JONES, Mr. OXLEY, Mr. COBURN, Mr. LARGENT, Mr. LUCAS, Mr. WATTS of Oklahoma, Mr. BARTON of Texas, Mr. DELAY, Mr. SAM JOHNSON of Texas, Mr. STOCKMAN, Mr. SHADEGG, Mr. CALLAHAN, Mr. LAUGHLIN, Mrs. VUCANOVICH, Mr. TEJEDA, Mr. BACHUS, Mr. COX of California, Mr. FUNDERBURK, Mr. BOEHNER, Mr. CRANE, Mr. DREIER, Mr. EDWARDS, Mr. NETHERCUTT, Mr. PETE GEREN of Texas, Mr. ORTIZ, Mr. HALL of Texas, Mr. DUNCAN, Mr. MCCRERY, and Mr. LIVINGSTON) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

# A BILL

To reauthorize and amend the Endangered Species Act of 1973.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Endangered Species Conservation and Management Act  
6 of 1995”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for  
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References to Endangered Species Act of 1973.
- Sec. 3. Findings, purposes, and policy of Endangered Species Act of 1973.

**TITLE I—PRIVATE PROPERTY RIGHTS AND VOLUNTARY  
INCENTIVES FOR PRIVATE PROPERTY OWNERS**

- Sec. 101. Compensation for use or taking of private property.
- Sec. 102. Voluntary cooperative management agreements.
- Sec. 103. Grants for improving and conserving habitat for species.
- Sec. 104. Technical assistance programs.
- Sec. 105. Water rights.

**TITLE II—IMPROVING ABILITY TO COMPLY WITH THE  
ENDANGERED SPECIES ACT OF 1973**

- Sec. 201. Enforcement procedures.
- Sec. 202. Removing punitive disincentives.
- Sec. 203. Allowing non-Federal persons to use the consultation procedures.
- Sec. 204. Permitting requirements for incidental takes.
- Sec. 205. General, research, and educational permits.
- Sec. 206. Maintenance of aquatic habitats for listed species.
- Sec. 207. Compliance with international requirements and treaties.
- Sec. 208. Incentives for protection of marine species.

**TITLE III—IMPROVING SCIENTIFIC INTEGRITY OF LISTING  
DECISIONS AND PROCEDURES**

- Sec. 301. Improving the validity and credibility of decisions.
- Sec. 302. Peer review.
- Sec. 303. Making data public.
- Sec. 304. Improving the petition and designation processes.

- Sec. 305. Greater State involvement.
- Sec. 306. Monitoring the status of species.
- Sec. 307. Petitions to delist species.

#### TITLE IV—RECOGNIZING OTHER FEDERAL ACTION, LAWS, AND MISSIONS

- Sec. 401. Balance ESA with other laws and missions.
- Sec. 402. Exemptions from consultation and conferencing.
- Sec. 403. Eliminating the exemption committee (GOD committee).

#### TITLE V—BETTER MANAGEMENT AND CONSERVATION OF LISTED SPECIES

- Sec. 501. Setting conservation objectives.
- Sec. 502. Preparing a conservation plan.
- Sec. 503. Interim measures.
- Sec. 504. Critical habitat for species.
- Sec. 505. Recognition of captive propagation as means of recovery.
- Sec. 506. Introduction of species.
- Sec. 507. Conserving threatened species.

#### TITLE VI—HABITAT PROTECTIONS

- Sec. 601. Federal biological diversity reserve.
- Sec. 602. Land acquisition.
- Sec. 603. Property exchanges.

#### TITLE VII—STATE AUTHORITY TO PROTECT ENDANGERED AND THREATENED SPECIES

- Sec. 701. State authority.
- Sec. 702. State programs affected by the Convention.

#### TITLE VIII—FUNDING OF CONSERVATION MEASURES

- Sec. 801. Authorizing increased appropriations.
- Sec. 802. Funding of Federal mandates.
- Sec. 803. Endangered Species and Threatened Species Conservation Trust Fund.

#### TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 901. Amendments to definitions.
- Sec. 902. Review of species of national interest.
- Sec. 903. Preparation of conservation plans for species listed before enactment of this Act.
- Sec. 904. Conforming amendment to table of contents.

1 **SEC. 2. REFERENCES TO ENDANGERED SPECIES ACT OF**  
 2 **1973.**

3 Except as otherwise expressly provided, whenever in  
 4 this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-  
2 sion, the reference shall be considered to be made to such  
3 section or other provision of the Endangered Species Act  
4 of 1973 (16 U.S.C. 1531 et seq.).

5 **SEC. 3. FINDINGS, PURPOSES, AND POLICY OF ENDAN-**  
6 **GERED SPECIES ACT OF 1973.**

7 (a) FINDINGS.—Section 2(a) (16 U.S.C. 1531(a)) is  
8 amended—

9 (1) by amending paragraph (1) to read as fol-  
10 lows:

11 “(1) various species of fish, wildlife, and plants  
12 in the United States have been rendered extinct be-  
13 cause of inadequate conservation practices and natu-  
14 ral processes;” and

15 (2) by striking “and” after the semicolon at the  
16 end of paragraph (4)(G), by striking the period at  
17 the end of paragraph (5) and inserting “; and”, and  
18 by adding at the end the following new paragraph:

19 “(6) the Nation’s economic well-being is essen-  
20 tial to the ability to maintain a sustainable resource  
21 base, therefore economic impacts and private prop-  
22 erty owners’ rights must be considered while encour-  
23 aging practices that protect species.”.

24 (b) PURPOSES AND POLICY.—Section 2 (b) and (c)  
25 (16 U.S.C. 1531 (b), (c)) are amended to read as follows:

1       “(b) PURPOSES.—The purposes of this Act are the  
2 following:

3           “(1) To provide a feasible and practical means  
4 to conserve endangered species and threatened spe-  
5 cies consistent with protection of the rights of pri-  
6 vate property owners and ensuring economic stabil-  
7 ity.

8           “(2) To provide a program for the conservation  
9 and management of such endangered species and  
10 threatened species taking into account the economic  
11 and social consequences of such program.

12           “(3) To take such steps as may be practicable  
13 to achieve the purposes of the treaties and conven-  
14 tions set forth in subsection (a) of this section.

15       “(c) POLICY.—

16           “(1) FEDERAL AUTHORITY.—It is further de-  
17 clared to be the policy of Congress that all Federal  
18 departments and agencies shall seek to conserve and  
19 manage endangered species and threatened species  
20 and shall, consistent with their primary missions,  
21 utilize their authorities in furtherance of the pur-  
22 poses of this Act.

23           “(2) COOPERATION WITH STATES.—It is fur-  
24 ther declared to be the policy of Congress that Fed-  
25 eral agencies shall cooperate with State and local



1 agencies to resolve water resource issues in concert  
2 with conservation of endangered species and consist-  
3 ent with State and local water laws.

4 “(3) PROTECTION OF PRIVATE PROPERTY  
5 RIGHTS.—It is the policy of the Federal Government  
6 that agency action taken pursuant to this Act shall  
7 not use or limit the use of privately owned property  
8 when such action diminishes the value of such prop-  
9 erty without payment of fair market value to the  
10 owner of private property. Each Federal agency, of-  
11 ficer, and employee shall exercise authority under  
12 this Act to ensure that agency action will not violate  
13 the policy established in this paragraph.”.

14 **TITLE I—PRIVATE PROPERTY**  
15 **RIGHTS AND VOLUNTARY IN-**  
16 **CENTIVES FOR PRIVATE**  
17 **PROPERTY OWNERS**

18 **SEC. 101. COMPENSATION FOR USE OR TAKING OF PRIVATE**  
19 **PROPERTY.**

20 The Endangered Species Act of 1973 (16 U.S.C.  
21 1531 et seq.) is amended by adding at the end the follow-  
22 ing new section:

23 **“SEC. 19. RIGHT TO COMPENSATION.**

24 “(a) PROHIBITION.—The Federal Government shall  
25 not take an agency action affecting privately owned prop-

1 erty or nonfederally owned property under this Act which  
2 results in diminishment of value of any portion of that  
3 property by 20 percent or more unless compensation is  
4 offered in accordance with this section.

5       “(b) COMPENSATION FOR USE OR LIMITATION ON  
6 USE.—The agency or agencies that take an agency action  
7 that exceeds the amount provided in subsection (a) shall  
8 compensate the private property owner for the otherwise  
9 lawful use or limitation on the otherwise lawful use in the  
10 amount of the diminution in value of the portion of that  
11 property resulting from the use or limitation on use. If  
12 the diminution in value of a portion of that property is  
13 greater than 50 percent, at the option of the owner, the  
14 agency or agencies shall buy that portion of the property  
15 and shall pay fair market value based on the value of the  
16 property before the use or limitation on use was imposed.  
17 Compensation paid shall reflect the duration of the use  
18 or limitation on use necessary to achieve the purposes of  
19 this Act.

20       “(c) REQUEST OF OWNER.—An owner seeking com-  
21 pensation under this section shall make a written request  
22 for compensation to the agency implementing the agency  
23 action. The request shall, at a minimum, identify the af-  
24 fected portion of the property, the nature of the use or  
25 limitation, and the amount of compensation claimed. No

1 such request may be made later than one year after the  
2 owner receives actual notice that the use of property has  
3 been limited by an agency action.

4       “(d) NEGOTIATIONS.—The agency may negotiate  
5 with that owner to reach agreement on the amount of the  
6 compensation and the terms of any agreement for pay-  
7 ment. If such an agreement is reached, the agency shall  
8 promptly pay the owner the amount agreed upon. An  
9 agreement under this section may include a transfer of  
10 the title or an agreement to use the property for a limited  
11 period of time.

12       “(e) CHOICE OF REMEDIES.—If, not later than 180  
13 days after the written request is made, the parties have  
14 not reached an agreement on compensation, the owner  
15 may elect binding arbitration or seek compensation due  
16 under this section in a civil action.

17       “(f) ARBITRATION.—The procedures that govern the  
18 arbitration shall, as nearly as practicable, be those estab-  
19 lished under title 9, United States Code, for arbitration  
20 proceedings to which that title applies. An award made  
21 in such arbitration shall include a reasonable attorney’s  
22 fee and other arbitration costs, including appraisal fees.  
23 The agency shall promptly pay any award made to the  
24 owner.

1       “(g) CIVIL ACTION.—An owner who prevails in a civil  
2 action against the agency pursuant to this section shall  
3 be entitled to, and the agency shall be liable for, the  
4 amount of compensation awarded plus reasonable attor-  
5 ney’s fees and other litigation costs, including appraisal  
6 fees. The court shall award interest on the amount of any  
7 compensation from the time of the limitation.

8       “(h) SOURCE OF PAYMENTS.—Any payment made  
9 under this section to an owner, and any judgment obtained  
10 by an owner in a civil action under this section shall, not-  
11 withstanding any other provision of law, be made from the  
12 annual appropriation of the agency that took the agency  
13 action. If the agency action resulted from a requirement  
14 imposed by another agency, then the agency making the  
15 payment or satisfying the judgment may seek partial or  
16 complete reimbursement from the appropriated funds of  
17 the other agency. For this purpose the head of the agency  
18 concerned may transfer or reprogram any appropriated  
19 funds available to the agency. If insufficient funds exist  
20 for the payment or to satisfy the judgment, it shall be  
21 the duty of the head of the agency to seek the appropria-  
22 tion of such funds for the next fiscal year.

23       “(i) AVAILABILITY OF APPROPRIATIONS.—Notwith-  
24 standing any other provision of law, any obligation of the

1 United States to make any payment under this section  
2 shall be subject to the availability of appropriations.

3       “(j) DUTY OF NOTICE TO OWNERS.—Whenever an  
4 agency takes an agency action limiting the use of private  
5 property the agency shall give appropriate notice to the  
6 owners of that property directly affected explaining their  
7 rights under this section and the procedures for obtaining  
8 any compensation that may be due to them under this sec-  
9 tion.

10       “(k) RULES OF CONSTRUCTION.—The following rules  
11 of construction shall apply to this Act:

12               “(1) OTHER RIGHTS PRESERVED.—Nothing in  
13 this Act shall be construed to limit any right to com-  
14 pensation that exists under the Constitution or  
15 under other laws.

16               “(2) EXTENT OF FEDERAL AUTHORITY.—Pay-  
17 ment of compensation under this section (other than  
18 when the property is bought by the Federal Govern-  
19 ment at the option of the owner) shall not confer  
20 any rights on the Federal Government other than  
21 the use or limitation on use resulting from the agen-  
22 cy action for the duration so that the agency action  
23 may achieve the species conservation purposes of  
24 this Act.

25       “(l) DEFINITIONS.—For the purposes of this section:

## 11

1           “(1) AGENCY.—The term ‘agency’ has the  
2 meaning given that term in section 551 of title 5,  
3 United States Code.

4           “(2) AGENCY ACTION.—The term ‘agency ac-  
5 tion’—

6                 “(A) subject to subparagraph (B), has the  
7 meaning given that term in section 551 of title  
8 5, United States Code, and

9                 “(B) includes—

10                         “(i) the loss of use of property to  
11 avoid prosecution under section 11;

12                         “(ii) a designation pursuant to section  
13 9(i) of privately owned property as critical  
14 habitat;

15                         “(iii) the denial of a permit under sec-  
16 tion 10 that restricts the use of private  
17 property;

18                         “(iv) an agency action pursuant to a  
19 biological opinion under section 7 that  
20 would cause an agency to restrict the use  
21 of private property;

22                         “(v) an agreement under section 6 to  
23 set aside property for habitat under the  
24 terms of an easement or other contract;

1                   “(vi) a restriction imposed on private  
2                   property as part of a conservation plan  
3                   adopted by the Secretary under section 5;

4                   “(vii) any other agency action that re-  
5                   stricts a legal right to use that property,  
6                   including, the right to alter habitat; and

7                   “(viii) the making of a grant of land  
8                   or money, to a public authority or a pri-  
9                   vate entity as a predicate to an agency ac-  
10                  tion by the recipient that would constitute  
11                  a limitation if done directly by the agency.

12                 “(3) FAIR MARKET VALUE.—The term ‘fair  
13                 market value’ means the most probable price at  
14                 which property would change hands, in a competitive  
15                 and open market under all conditions requisite to  
16                 fair sale, between a willing buyer and willing seller,  
17                 neither being under any compulsion to buy or sell  
18                 and both having reasonable knowledge of relevant  
19                 facts, prior to occurrence of the agency action.

20                 “(4) LAW OF THE STATE.—The term ‘law of  
21                 the State’ includes the law of a political subdivision  
22                 of a State.

23                 “(5) LIMITATION ON USE.—The term ‘limita-  
24                 tion on use’ means only a limitation on a use which

1 is otherwise permissible under applicable State  
2 property or nuisance laws.

3 “(6) PRIVATE PROPERTY, PRIVATELY OWNED  
4 PROPERTY, NON-FEDERAL PROPERTY.—The term  
5 ‘private property’, ‘privately owned property’, or  
6 ‘non-Federal property’ means property which is  
7 owned by a person other than any Federal entity of  
8 government.

9 “(7) PROPERTY.—The term ‘property’ means  
10 land, an interest in land, the right to use or receive  
11 water, and any personal property that is subject to  
12 use by the Federal Government or to a restriction on  
13 use.”.

14 **SEC. 102. VOLUNTARY COOPERATIVE MANAGEMENT**  
15 **AGREEMENTS.**

16 (a) COOPERATIVE MANAGEMENT AGREEMENT DE-  
17 FINED.—Section 3 (16 U.S.C. 1532) is amended—

18 (1) by redesignating paragraphs (2) through  
19 (21) in order as paragraphs (3), (4), (5), (7), (9),  
20 (10), (11), (12), (13), (18), (19), (20), (22), (23),  
21 (24), (25), (26), (27), and (28); and

22 (2) by adding after paragraph (5) (as redesign-  
23 dated by paragraph (1) of this section) the following  
24 new paragraph:



1       “(6) The term ‘cooperative management agreement’  
2 means a voluntary agreement entered into under section  
3 6(b).”.

4       (b) VOLUNTARY COOPERATIVE MANAGEMENT  
5 AGREEMENTS.—Section 6 (16 U.S.C. 1535) is amended  
6 by striking so much as precedes subsection (c) and insert-  
7 ing the following:

8       “SEC. 6. COOPERATION WITH NON-FEDERAL PERSONS.

9       “(a) GENERALLY.—In carrying out the program au-  
10 thorized by this Act, the Secretary shall cooperate to the  
11 maximum extent practicable with the States and other  
12 non-Federal persons. Such cooperation shall include con-  
13 sultation with the States and non-Federal persons con-  
14 cerned before acquiring any land or water, or interest  
15 therein, for the purpose of conserving any endangered spe-  
16 cies or threatened species.

17       “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—

18       “(1) IN GENERAL.—The Secretary may enter  
19 into a cooperative management agreement with any  
20 State or group of States, political subdivision of a  
21 State, local government, or non-Federal person—

22       “(A) for the management of a species or  
23 group of species listed as endangered species or  
24 threatened species under section 4, a species or  
25 group of species proposed to be listed under

1 section 4, or species or group of species which  
2 are candidates for listing; or

3 “(B) for the management or acquisition of  
4 an area which provides habitat for a species.

5 “(2) SCOPE OF COOPERATIVE MANAGEMENT  
6 AGREEMENTS.—(A) A cooperative management  
7 agreement entered into under this subsection—

8 “(i) may provide for the management of a  
9 species or group of species on both public and  
10 private lands which are under the authority,  
11 control or ownership of a State or group of  
12 States, political subdivision of a State, local  
13 government, or non-Federal person and which  
14 are affected by a listing determination, pro-  
15 posed determination, or proposed candidacy for  
16 determination; and

17 “(ii) may include the acquisition or des-  
18 ignation of land as habitat for species.

19 “(B) A cooperative management agreement  
20 may not restrict private or non-Federal property un-  
21 less written consent to such restrictions by the non-  
22 Federal owner is given either to the Secretary or the  
23 State, political subdivision, local government, or non-  
24 Federal person who is a party to the agreement.

1           “(C) The Secretary may grant to a party to an  
2 agreement the authority to undertake programs to  
3 enhance the population or habitat of a species on  
4 federally owned lands, except that such authority  
5 shall not otherwise conflict with other uses of such  
6 land which are approved by the Secretary or author-  
7 ized by the Congress.

8           “(D) The Secretary is authorized, in conjunc-  
9 tion with entering into and as a part of any agree-  
10 ment under this section, to provide funds to carry  
11 out the agreement to a non-Federal person, as pro-  
12 vided in paragraph (11).

13           “(3) NOTIFICATION.—Not later than 30 days  
14 after submission of a request to enter into a cooper-  
15 ative management agreement, the party submitting  
16 the request shall provide notice of the request to any  
17 non-Federal person or Federal power marketing ad-  
18 ministration that would be subject to the proposed  
19 cooperative management agreement.

20           “(4) DEVELOPMENT OF PROPOSED AGREE-  
21 MENT.—(A) The requesting party shall develop and  
22 submit to the Secretary a proposed cooperative man-  
23 agement agreement.

24           “(B) The Secretary shall publish in the Federal  
25 Register a notice of availability and a request for

1 public comment on any proposed cooperative man-  
2 agement agreement between the Secretary and any  
3 governmental entity and shall hold a public hearing  
4 on such a proposed cooperative management agree-  
5 ment in each county or parish in which the proposed  
6 agreement would be in effect.

7 “(C) Before entering into a cooperative man-  
8 agement agreement with another governmental en-  
9 tity or a non-Federal person for the management of  
10 federally owned land, the Secretary shall consider  
11 and weigh carefully all information received in re-  
12 sponse to the request for comment published under  
13 subparagraph (B) and testimony presented in each  
14 hearing held under subparagraph (B).

15 “(5) APPROVAL OF AGREEMENT.—(A) Not  
16 later than 120 days after the submission of a pro-  
17 posed cooperative management agreement under  
18 paragraph (4), the Secretary shall determine wheth-  
19 er the proposed agreement is in accordance with this  
20 subsection and will promote the conservation of the  
21 species to which the proposed agreement applies.

22 “(B) The Secretary shall approve and enter  
23 into a proposed cooperative management agreement,  
24 if the Secretary finds that—

1           “(i) the requesting party has sufficient au-  
2           thority under law to implement and carry out  
3           the terms of the agreement;

4           “(ii) the agreement defines an area that  
5           serves as habitat for the species or group of  
6           species to which the agreement applies;

7           “(iii) the agreement adequately provides  
8           for the administration and management of the  
9           identified management area;

10          “(iv) the agreement promotes the conserva-  
11          tion of the species to which the agreement ap-  
12          plies by committing Federal or non-Federal ef-  
13          forts to the conservation;

14          “(v) the term of the agreement is of suffi-  
15          cient duration to accomplish the provisions of  
16          the agreement; and

17          “(vi) the agreement is adequately funded  
18          to carry out the agreement.

19          “(C) No later than 30 days after entering into  
20          a cooperative management agreement with a govern-  
21          mental entity, the Secretary shall publish in the  
22          Federal Register a notice of availability of the terms  
23          of such agreement and the response of the Secretary  
24          to all information received or presented with respect  
25          to the agreement pursuant to paragraph (4)(B).

1           “(6) ENVIRONMENTAL ASSESSMENTS.—Prepa-  
2           ration, approval, and entering into a cooperative  
3           management agreement under this subsection shall  
4           not be subject to section 102(2) of the National En-  
5           vironmental Policy Act of 1969 (42 U.S.C. 4332(2)).

6           “(7) NO SURPRISES.—For any species or area  
7           that is the subject of a cooperative management  
8           agreement under this subsection, a party to the  
9           agreement shall not be required—

10           “(A) to make any additional payment for  
11           any purpose, or to accept any additional restric-  
12           tion on any parcel of land available for develop-  
13           ment or land management under the agree-  
14           ment, without consent of the party; or

15           “(B) to undertake any other measure to  
16           minimize or mitigate impacts on the species in  
17           addition to measures required by the agreement  
18           as established.

19           “(8) EFFECT OF LISTING OF SPECIES.—A co-  
20           operative management agreement entered into under  
21           this subsection shall remain in effect and shall not  
22           be required to be amended if a species to which the  
23           agreement does not apply is determined to be an en-  
24           dangered species or threatened species under section  
25           4.

1           “(9) APPLICABILITY OF CERTAIN PROVI-  
2           SIONS.—Sections 5, 7, and 9 shall not apply to those  
3           activities of a party to a cooperative management  
4           agreement which are conducted in accordance with  
5           such agreement.

6           “(10) VIOLATIONS OF AGREEMENTS.—(A) If  
7           the Secretary determines that a party to a coopera-  
8           tive management agreement is not administering or  
9           acting in accordance with the agreement, the Sec-  
10          retary shall notify the party.

11          “(B) If a party that is notified under subpara-  
12          graph (A) fails to take appropriate corrective action  
13          within a period of time determined by the Secretary  
14          to be reasonable (not to exceed 90 days after the  
15          date of the notification)—

16                 “(i) the Secretary shall rescind the entire  
17                 cooperative management agreement or the ap-  
18                 plicability of the agreement to the party that is  
19                 the subject of the notification; and

20                 “(ii) beginning on the date of the rescis-  
21                 sion—

22                         “(I) the entire agreement shall not be  
23                         effective, or the agreement shall not be ef-  
24                         fective with respect to the party, whichever  
25                         is appropriate; and

1                   “(II) sections 5, 7, and 9 shall apply  
2                   to activities of the party.”.

3 **SEC. 103. GRANTS FOR IMPROVING AND CONSERVING**  
4                   **HABITAT FOR SPECIES.**

5           Section 6 (16 U.S.C. 1535), as amended by section  
6 102(b) of this Act, is amended by adding at the end of  
7 subsection (b) the following new paragraph:

8           “(11) **HABITAT CONSERVATION GRANTS.—(A)**  
9           The Secretary may, from amounts in the account es-  
10           tablished by section 13 or from funds appropriated  
11           for such purpose, provide a grant to a non-Federal  
12           person (other than an officer, employee, or agent  
13           (acting in an official capacity) or a department or  
14           instrumentality of a State, municipality, or political  
15           subdivision thereof) for the purpose of conserving,  
16           preserving, or improving habitat for any species that  
17           is determined under section 4 to be an endangered  
18           species or a threatened species.

19           “(B) The Secretary may provide a grant under  
20           this paragraph if the Secretary determines that—

21                   “(i) the property for which the grant is  
22                   provided contains habitat that significantly con-  
23                   tributes to the protection of the population of  
24                   the species;



1                   “(ii) the property has been managed for  
2                   species protection for a period of time that has  
3                   been sufficient to significantly contribute to the  
4                   protection of the population of the species; and

5                   “(iii) the management of the habitat ad-  
6                   vances the interest of species protection.

7                   “(C) A grant made under this paragraph shall  
8                   be transferable to subsequent owners of the property  
9                   for which the grant is provided.”.

10 **SEC. 104. TECHNICAL ASSISTANCE PROGRAMS.**

11                   Section 5 (16 U.S.C. 1534), as added by section 501  
12 of this Act and as amended by sections 502(a), 503,  
13 504(a), and 505 of this Act, is amended by adding at the  
14 end the following new subsection:

15                   “(m) TECHNICAL ASSISTANCE PROGRAM.—

16                   “(1) IN GENERAL.—The Secretary shall initiate  
17                   a technical assistance program to provide technical  
18                   advice and assistance to non-Federal persons who  
19                   wish to participate in achieving the conservation ob-  
20                   jective for a species for which a conservation goal  
21                   has been adopted under this section. The technical  
22                   assistance provided shall include information on  
23                   habitat needs of species, optimum management of  
24                   habitat for species, methods for propagation of spe-  
25                   cies, feeding needs and habits, predator controls,

1 and any other information which a non-Federal per-  
2 son may utilize or request for the purpose of con-  
3 serving a species determined to be an endangered  
4 species or threatened species or proposed to be de-  
5 termined as an endangered species or threatened  
6 species.

7 “(2) REGULATIONS TO PROVIDE EXEMPTIONS  
8 FROM SECTION 9.—The Secretary shall promulgate  
9 regulations that establish exemptions from section 9  
10 for any person who participates in a conservation  
11 program under this subsection.”.

12 **SEC. 105. WATER RIGHTS.**

13 Section 6 (16 U.S.C. 1535) is amended by adding  
14 at the end the following:

15 “(j) WATER RIGHTS.—Nothing in this Act shall be  
16 construed to supersede, abrogate, or otherwise impair any  
17 right or authority of a State to allocate or administer  
18 quantities of water (including boundary waters). Nothing  
19 in this Act shall be implemented, enforced, or construed  
20 to allow any officer or agency of the United States to uti-  
21 lize directly or indirectly the authorities established under  
22 this Act to impose any requirement not imposed by the  
23 State which would supersede, abrogate, condition, restrict,  
24 or otherwise impair rights to the use of water resources  
25 allocated under State law, interstate water compact, or

1 Supreme Court decree, or held by the United States for  
2 use by a State, its political subdivisions, or its citizens.  
3 The exercise of authority pursuant to or in furtherance  
4 of this Act shall not be construed to create a limitation  
5 on the exercise of rights to water or constitute a cause  
6 for nondelivery of water pursuant to contract or State  
7 law.”.

8 **TITLE II—IMPROVING ABILITY**  
9 **TO COMPLY WITH THE EN-**  
10 **DANGERED SPECIES ACT OF**  
11 **1973**

12 **SEC. 201. ENFORCEMENT PROCEDURES.**

13 (a) IN GENERAL.—Section 9(a) (16 U.S.C. 1538(a))  
14 is amended—

15 (1) in paragraph (1) by amending the matter  
16 preceding subparagraph (A) to read as follows: “(1)  
17 Except as provided in paragraph (3), section  
18 6(g)(2), subsections (d)(3) and (e) of section 5, sec-  
19 tion 7(a), and section 10, with respect to any endan-  
20 gered species of fish or wildlife listed pursuant to  
21 section 4 it is unlawful for any person subject to the  
22 jurisdiction of the United States to—”;

23 (2) in paragraph (2) by amending the matter  
24 preceding subparagraph (A) to read as follows: “(2)  
25 Except as provided in section 6(g)(2), subsections

1 (d)(3) and (e) of section 5, and section 10, with re-  
2 spect to any endangered species of plants listed pur-  
3 suant to section 4, it is unlawful for any person sub-  
4 ject to the jurisdiction of the United States to—”;  
5 and

6 (3) by adding at the end the following new  
7 paragraph:

8 “(3) PERMITTED TAKINGS.—An activity of a  
9 non-Federal person is not a taking of a species if the  
10 activity—

11 “(A) is consistent with the provisions of a  
12 final conservation plan or conservation objec-  
13 tive;

14 “(B) complies with the terms and condi-  
15 tions of an incidental take permit or a coopera-  
16 tive management agreement;

17 “(C) addresses a critical, imminent threat  
18 to public health or safety or a catastrophic nat-  
19 ural event, or is mandated by any Federal,  
20 State, or local government agency for public  
21 health or safety purposes; or

22 “(D) is incidental to, and not the purpose  
23 of, the carrying out of an otherwise lawful ac-  
24 tivity that occurs within an area of the terri-  
25 torial sea or exclusive economic zone established

1 by Proclamation Numbered 5030, dated March  
2 10, 1983, that is not designated as critical  
3 habitat under section 5(i), and the affected spe-  
4 cies is not a species of fish.”.

5 (b) REWARDS AND INCIDENTAL EXPENSES.—Section  
6 11 (16 U.S.C. 1540) is amended—

7 (1) in subsection (d)(2) by inserting after “tem-  
8 porary care for any” the following: “endangered spe-  
9 cies or threatened species of”;

10 (2) in subsection (e)(3) in the fourth sentence  
11 by striking “Any fish, wildlife,” and inserting “Any  
12 endangered species or threatened species of fish or  
13 wildlife,”;

14 (3) in subsection (e)(4)(A) by inserting “endan-  
15 gered species or threatened species of” after “All”;

16 (4) in subsection (e)(4)(B) by inserting “endan-  
17 gered species or threatened speices of” after “im-  
18 porting of any”;

19 (5) in subsection (f) in the first sentence by in-  
20 serting “endangered species or threatened species  
21 of” after “storage of”;

22 (6) in subsection (e) by adding at the end the  
23 following new paragraph:

24 “(7) ADOPTION OF REGULATIONS.—(A) No in-  
25 terpretation, policy, guideline, finding, or other in-

1 formal determination may be relied upon by the Sec-  
2 retary in the implementation and enforcement of  
3 this Act unless such determination has been the sub-  
4 ject of a proposed rule, subject to review by the pub-  
5 lic and comment for a period of no less than 60  
6 days. Any proposed rule under this subparagraph  
7 must include—

8 “(i) a plain-language explanation of the  
9 reasons for and purpose of the proposed rule;

10 “(ii) an analysis of the anticipated impact  
11 of the proposed rule;

12 “(iii) an analysis showing that the restora-  
13 tion benefit of the proposed rule outweighs any  
14 negative conservation impact of that proposed  
15 rule;

16 “(iv) an analysis showing that compliance  
17 with the proposed rule is reasonably within the  
18 means of the State or the range nation con-  
19 cerned; and

20 “(v) a summary of the literature reviewed  
21 and experts consulted in regard to the species  
22 involved, and a summary of the Secretary’s  
23 findings based on that review and consultation.

24 “(B) No refusal of entry, seizure of evidence, or  
25 other enforcement action may take place under this

1 Act if the action is based solely on a notification  
2 under the Convention or on a resolution of the Con-  
3 ference of the Parties to the Convention.

4 “(C) The burden is on the Secretary to show  
5 that a specimen belongs to a species which is deter-  
6 mined to be an endangered species or threatened  
7 species under this Act or is included in an Appendix  
8 to the Convention. The Secretary may not detain a  
9 specimen for longer than 30 days for the purpose of  
10 identification. If the specimen cannot be positively  
11 identified within that time, then it shall be re-  
12 leased.”; and

13 (7) by amending subsection (g) to read as fol-  
14 lows:

15 “(g) CITIZEN SUITS.—

16 “(1) IN GENERAL.—Except as provided in para-  
17 graph (2), a civil suit may be commenced by any  
18 person on his or her own behalf, who satisfies the  
19 requirements of the Constitution and who has suf-  
20 fered or is threatened with economic or other injury  
21 resulting from the violation, regulation, application,  
22 nonapplication, or failure to act—

23 “(A) to enjoin the United States or any  
24 agency or official of the United States who is  
25 alleged to be in violation of any provision of this

1 Act or regulation issued under the authority  
2 thereof, if the violation poses immediate and ir-  
3 reparable harm to a threatened species or en-  
4 dangered species;

5 “(B) to compel the Secretary to apply, or  
6 modify the application of, the prohibitions set  
7 forth in or authorized pursuant to section  
8 9(a)(1)(B) or 4(d);

9 “(C) to compel the Secretary to apply, or  
10 modify the application of, the provisions of sec-  
11 tion 10(a); or

12 “(D) against the Secretary where there is  
13 alleged a failure of the Secretary to perform  
14 any act or duty under section 4(d) which is not  
15 discretionary with the Secretary.

16 The district courts shall have jurisdiction to enforce  
17 any such provision or regulation, or to order the  
18 Secretary to perform such act or duty, as the case  
19 may be.

20 “(2) PREREQUISITE PROCEDURES.—(A) No ac-  
21 tion may be commenced under paragraph (1)(A)—

22 “(i) prior to 60 days after written notice of  
23 the alleged violation has been given to the Sec-  
24 retary, and to any agency or official of the  
25 United States who is alleged to be in violation,



1           except that a State may commence an action at  
2           any time;

3           “(ii) if the Secretary has commenced ac-  
4           tion to impose a penalty pursuant to subsection  
5           (a); or

6           “(iii) if the United States has commenced  
7           and is diligently prosecuting a criminal action  
8           in a court of the United States or a State to  
9           redress the alleged violation of any such provi-  
10          sion or regulation.

11          “(B) No action may be commenced under para-  
12          graph (1)(B) prior to 60 days after written notice  
13          has been given to the Secretary setting forth the  
14          reasons for applying, or modifying the application of,  
15          the prohibitions with respect to the taking of a  
16          threatened species.

17          “(C) No action may be commenced under para-  
18          graph (1)(C) prior to 60 days after written notice  
19          has been given to the Secretary, except that such ac-  
20          tion may be brought immediately after such notifica-  
21          tion in the case of an action under this subsection  
22          respecting an emergency posing a significant risk to  
23          the well-being of any species of fish or wildlife or  
24          plants.

1           “(3) VENUE.—Any suit under this subsection  
2           may be brought in the judicial district in which the  
3           violation occurs.

4           “(4) COSTS.—The court, in issuing any final  
5           order in any suit brought pursuant to paragraph  
6           (1), may award costs of litigation (excluding attor-  
7           ney and expert witness fees) to any party, whenever  
8           the court determines such award is appropriate.

9           “(5) INJUNCTIVE RELIEF.—The injunctive re-  
10          lief provided by this subsection shall not restrict any  
11          right which any person (or class of persons) may  
12          have under any statute or common law to seek en-  
13          forcement of any standard or limitation or to seek  
14          any other relief (including relief against the Sec-  
15          retary or a State agency).

16          “(6) INTERVENTION.—Any person may inter-  
17          vene as a matter of right in any civil suit brought  
18          under this subsection if such suit presents a reason-  
19          able threat of economic injury to such person. Any  
20          intervenor under this paragraph shall have the same  
21          right to present argument and to accept or reject po-  
22          tential settlements as do the parties to the suit.”.

23   **SEC. 202. REMOVING PUNITIVE DISINCENTIVES.**

24          Section 3(26) (as redesignated by section 102(a)(1)  
25          of this Act) is amended to read as follows:

1           “(26)(A) The term ‘take’ means to harm, pur-  
2           sue, hunt, shoot, wound, kill, trap, capture, or col-  
3           lect, or to attempt to engage in that conduct.

4           “(B) In subparagraph (A), the term ‘harm’  
5           means to take a direct action against any member  
6           of an endangered species of fish or wildlife that ac-  
7           tually injures or kills a member of the species.”.

8   **SEC. 203. ALLOWING NON-FEDERAL PERSONS TO USE THE**  
9                                   **CONSULTATION PROCEDURES.**

10          Section 10(a) (16 U.S.C. 1539(a)), as amended by  
11          section 204(b) of this Act, is amended by adding at the  
12          end the following new paragraph:

13                 “(3) VOLUNTARY CONSULTATION.—(A) Subject  
14                 to such regulations as the Secretary may issue, any  
15                 non-Federal person may initiate consultation with  
16                 the Secretary on any prospective activity of the per-  
17                 son—

18                         “(i) to determine if the activity is consist-  
19                         ent or inconsistent with a conservation plan or  
20                         conservation objective; or

21                         “(ii) if the person determines that the ac-  
22                         tivity is inconsistent, to determine whether the  
23                         activity is likely to jeopardize the continued ex-  
24                         istence of an endangered species or a threat-  
25                         ened species, or to destroy or adversely modify

1           the designated critical habitat of the species in  
2           a manner that is likely to jeopardize the contin-  
3           ued existence of the species.

4           “(B) The voluntary consultation process for  
5           non-Federal persons authorized by subparagraph (A)  
6           shall be conducted in accordance with the procedures  
7           and requirements for consultation on agency actions  
8           set forth in section 7, except that—

9                   “(i) the period for completion of the con-  
10                   sultation shall be 90 days from the date on  
11                   which the consultation is initiated, or not later  
12                   than such other date as is mutually agreeable  
13                   to the Secretary and the person initiating the  
14                   consultation;

15                   “(ii) the person initiating the consultation  
16                   shall not be required to prepare a biological as-  
17                   sessment or equivalent document;

18                   “(iii) neither the activity for which the con-  
19                   sultation process is sought nor the consultation  
20                   process itself shall be deemed a Federal action  
21                   for the purpose of compliance with section  
22                   102(2) of the National Environmental Policy  
23                   Act of 1969 (42 U.S.C. 4332(2)) or an agency  
24                   action for the purpose of compliance with the  
25                   consultation requirement of section 7(a)(2);

1           “(iv) the Secretary shall provide the person  
2           initiating the consultation with a written opin-  
3           ion only, unless such person requests a permit  
4           referred to in paragraph (1)(B) and meets the  
5           requirements of clause (v); and

6           “(v) a permit described in clause (iv) shall  
7           be issued if the Secretary makes a finding of—

8                   “(I) consistency pursuant to subpara-  
9                   graph (A)(i);

10                   “(II) no jeopardy pursuant to sub-  
11                   paragraph (A)(ii); or

12                   “(III) jeopardy pursuant to subpara-  
13                   graph (A)(ii), but offers a reasonable and  
14                   prudent alternative which the person initi-  
15                   ating the consultation accepts.”.

16 **SEC. 204. PERMITTING REQUIREMENTS FOR INCIDENTAL**  
17 **TAKES.**

18           (a) **INCIDENTAL TAKE PERMIT DEFINED.**—Section  
19 3 (16 U.S.C. 1532) is amended by adding after paragraph  
20 (14) (as added by section 301(b)(3) of this Act) the follow-  
21 ing new paragraph:

22                   “(15) The term ‘incidental take permit’ means  
23                   a permit issued under section 10(a)(1)(B).”.

1 (b) TAKE PERMITS.—Section 10 (16 U.S.C. 1539)  
2 is amended by striking so much as precedes subsection  
3 (b) and inserting the following:

4 **“SEC. 10. EXCEPTIONS.**

5 “(a) PERMITS.—

6 “(1) AUTHORITY TO ISSUE PERMITS.—The Sec-  
7 retary may permit, under such terms and conditions  
8 as the Secretary shall prescribe—

9 “(A) any act otherwise prohibited by sec-  
10 tion 9 undertaken for scientific purposes or to  
11 enhance the propagation or survival of the af-  
12 fected species, including, but not limited to—

13 “(i) acts necessary for the establish-  
14 ment and maintenance of experimental  
15 populations pursuant to subsection (j);

16 “(ii) the public display or exhibition of  
17 living wildlife in a manner designed to edu-  
18 cate, or which otherwise contributes to the  
19 education of the public about the ecological  
20 role and conservation needs of the affected  
21 species;

22 “(iii) in the case of foreign species,  
23 acts that are consistent with the Conven-  
24 tion and with conservation strategies

1           adopted by the foreign nations responsible  
2           for the conservation of the species; and

3                   “(iv) acts necessary for the research  
4           in and carrying out of captive propagation;  
5           or

6                   “(B) any taking otherwise prohibited by  
7           section 9(a)(1)(B) if such taking is incidental  
8           to, and not the purpose of, the carrying out of  
9           an otherwise lawful activity.

10           “(2) SPECIES CONSERVATION PLANS.—(A) Ex-  
11           cept as provided in paragraph (3), no permit may be  
12           issued by the Secretary authorizing any taking re-  
13           ferred to in paragraph (1)(B) unless the applicant  
14           therefor submits to the Secretary a species conserva-  
15           tion plan that specifies—

16                   “(i) the impact on the species which will be  
17           the likely result of the activities to be per-  
18           mitted;

19                   “(ii) what steps the applicant can reason-  
20           ably and economically take consistent with the  
21           purposes and objectives of the activity to mini-  
22           mize such impacts, and the funding that will be  
23           available to implement such steps; and

1           “(iii) what alternative actions to such tak-  
2           ing the applicant considered and the reasons  
3           why such alternatives are not being utilized.

4           “(B) If the Secretary finds, after opportunity  
5           for public comment, with respect to a permit appli-  
6           cation and the related species conservation plan  
7           that—

8                   “(i) the taking will be incidental;

9                   “(ii) the applicant will, to the extent rea-  
10                  sonable and economically practicable, minimize  
11                  the impacts of such taking;

12                  “(iii) the applicant will ensure that ade-  
13                  quate funding for the plan will be provided;

14                  “(iv) the taking will not appreciably reduce  
15                  the likelihood of the survival and conservation  
16                  of the species; and

17                  “(v) the measures specified under subpara-  
18                  graph (A)(ii) will be met;

19           and the Secretary has received such other assur-  
20           ances as the Secretary may require that the plan will  
21           be implemented, the Secretary shall issue the permit.  
22           The permit shall contain such reasonable and eco-  
23           nomically practicable terms and conditions consist-  
24           ent with the purposes and objectives of the activity  
25           as the Secretary deems necessary or appropriate to



1 carry out the purposes of this paragraph, including,  
2 but not limited to, such reporting requirements as  
3 the Secretary deems necessary for determining  
4 whether such terms and conditions are being com-  
5 plied with.

6 “(C) The Secretary may not require the appli-  
7 cant, as a condition of processing the application or  
8 issuing the permit, to expand the application to in-  
9 clude land, an interest in land, right to use or re-  
10 ceive water, or a proprietary water right not owned  
11 by the applicant or to address a species other than  
12 the species for which the application is made.

13 “(D)(i) The Secretary shall complete the proc-  
14 essing of, and approve or deny, any application for  
15 a permit under paragraph (1)(B) within 90 days of  
16 the date of submission of the application or within  
17 such other period of time after such date of submis-  
18 sion to which the Secretary and the permit applicant  
19 mutually agree.

20 “(ii) The preparation and approval of a species  
21 conservation plan and issuance of a permit under  
22 paragraph (1)(B) shall not be subject to section  
23 102(2) of the National Environmental Policy Act of  
24 1969 (42 U.S.C. 4332(2)).

1           “(E) No additional measures to minimize and  
2 mitigate impacts on a species that is a subject of a  
3 permit issued under paragraph (1)(B) shall be re-  
4 quired of a permittee that is in compliance with the  
5 permit. With respect to any species that is a subject  
6 of such a permit, under no circumstance shall a per-  
7 mittee in compliance with the permit be required to  
8 make any additional payment for any purpose, or ac-  
9 cept any additional restriction on any parcel of land  
10 available for development or land management or  
11 any water or water-related right under the permit,  
12 without the consent of the permittee.

13           “(F)(i) For such activities as the Secretary de-  
14 termines will not appreciably reduce the chances of  
15 survival of a species, the Secretary may issue an in-  
16 terim permit to any applicant for a permit under  
17 this section that provides evidence of appropriate in-  
18 terim measures that—

19           “(I) will minimize impacts of any inciden-  
20 tal taking that may be associated with the ac-  
21 tivity proposed for permitting; and

22           “(II) are to be performed while the under-  
23 lying permit application is being considered  
24 under this section.

1           “(ii) An interim permit issued under clause  
2           (i)—

3                   “(I) shall specifically state the types of ac-  
4           tivities that are authorized to be carried out  
5           under the interim permit;

6                   “(II) shall not create any right to the issu-  
7           ance of a permit under this section;

8                   “(III) shall expire on the date of the grant-  
9           ing or denial of the underlying permit applica-  
10          tion; and

11                   “(IV) may be revoked by the Secretary  
12          upon failure to comply with any term of the in-  
13          terim permit.

14                   “(G) The Secretary shall revoke a permit issued  
15          under this paragraph if he finds that the permittee  
16          is not complying with the terms and conditions of  
17          the permit.”.

18          (c) MULTI-SPECIES PLANNING.—Section 10 (16  
19          U.S.C. 1539) is amended by adding at the end the follow-  
20          ing new subsection:

21                   “(k) MULTIPLE SPECIES CONSERVATION PLANS.—

22                   “(1) DEVELOPMENT.—The Secretary may as-  
23          sist a non-Federal person in the development of a  
24          plan, to be known as a ‘multiple species conservation  
25          plan’, for the conservation of—

1           “(A) any species with respect to which a  
2           finding is made and a status review is com-  
3           menced under section 4(b)(3)(B); and

4           “(B) any other species that—

5           “(i) inhabit the area covered by the  
6           plan; and

7           “(ii) are designated in the plan or are  
8           within a taxonomic group designated in the  
9           plan.

10          “(2) ISSUANCE OF PERMITS.—The Secretary  
11          may issue a permit under subsection (a)(1)(B) au-  
12          thorizing the take described in section 9(a)(1)(B) of  
13          a species for which a multiple species conservation  
14          plan is developed under this subsection, if the Sec-  
15          retary, after providing opportunity for public com-  
16          ment on the plan—

17          “(A) determines that the plan specifies the  
18          information described in subsection (a)(2)(A);

19          “(B) makes the findings described in sub-  
20          section (a)(2)(B) with respect to the permit ap-  
21          plication and the plan; and

22          “(C) receives such assurances as the Sec-  
23          retary may require that the plan will be imple-  
24          mented.

1           “(3) EFFECT OF LISTING OF SPECIES.—A mul-  
2           tiple species conservation plan developed under this  
3           subsection and a permit issued with respect to the  
4           plan shall remain in effect and shall not be required  
5           to be amended if a species to which the plan and  
6           permit apply is determined to be an endangered spe-  
7           cies or a threatened species under section 4.”.

8           (d) FOREIGN SPECIES.—Section 10(a), as amended  
9           by subsection (b) of this section and sections 203 and  
10          205(a) of this Act, is amended by adding at the end the  
11          following new paragraph:

12          “(7) FOREIGN SPECIES.—(A) In determining  
13          whether to issue a permit under subsection  
14          (a)(1)(A)(iii), there shall be a rebuttable presump-  
15          tion that the survival of a species is enhanced by the  
16          ordinary benefit occurring from the taking of a spec-  
17          imen for an inherently limited use in accordance  
18          with the laws and wildlife management policies of  
19          the nation in which it is found.

20          “(B) The Secretary may not refuse to issue a  
21          permit for such specimens and may not limit the  
22          number of such specimens which may be imported  
23          unless he makes and publishes in the Federal Reg-  
24          ister a finding that there is substantial evidence that  
25          the detriment resulting from the taking of such

1 specimens outweighs the benefit derived, and subse-  
2 quently promulgates regulations containing the limi-  
3 tation.

4 “(C) The Secretary shall transmit the full text  
5 and a complete description of the proposed regula-  
6 tion referred to in the preceding paragraph directly  
7 to the appropriate wildlife management authorities  
8 of the nations from which the specimens are ex-  
9 ported, in the language of those countries, with at  
10 least 180 days allowed for review and comment. The  
11 180-day period shall be counted from the date of the  
12 delivery of the materials to the wildlife management  
13 authority of each of the nations.

14 “(D) For the purpose of this paragraph, the  
15 term ‘inherently limited use’ means scientific collec-  
16 tion, live export for captive breeding, sport hunting,  
17 and falconry.”.

18 **SEC. 205. GENERAL, RESEARCH, AND EDUCATIONAL PER-**  
19 **MITTS.**

20 (a) **IN GENERAL.**—Section 10(a) (16 U.S.C.  
21 1539(a)), as amended by sections 203 and 204(b) of this  
22 Act, is amended by adding at the end the following new  
23 paragraphs:

24 “(4) **GENERAL PERMITS.**—(A) After providing  
25 notice and opportunity for public hearing, the Sec-

1       retary may issue a general permit under paragraph  
2       (1)(B) on a county, parish, State, regional, or na-  
3       tionwide basis for any category of activities that may  
4       affect a species determined to be an endangered spe-  
5       cies or threatened species if the Secretary deter-  
6       mines that the activities in the category are similar  
7       in nature, will cause only minimal adverse effects on  
8       the species if performed separately, and will have  
9       only minimal cumulative adverse effects on the spe-  
10      cies generally. A general permit issued under this  
11      paragraph shall specify the requirements and stand-  
12      ards that apply to an activity authorized by the gen-  
13      eral permit.

14           “(B) A general permit issued under this para-  
15      graph shall be effective for a period to be specified  
16      by the Secretary, but not to exceed the 5-year period  
17      that begins on the date of issuance of the permit.

18           “(C) The Secretary may revoke or modify a  
19      general permit if, after providing notice and oppor-  
20      tunity for public hearing, the Secretary determines  
21      that the activities authorized by the general permit  
22      have a greater than minimal adverse effect on a spe-  
23      cies that is included in a list published under section  
24      4(c)(1) or that the activities are more appropriately

1 authorized by individual permits issued under para-  
2 graph (1) or (3).

3 “(5) RESEARCH ON ALTERNATIVE METHODS  
4 AND TECHNOLOGIES.—Priority for issuing permits  
5 under paragraph (1)(A) shall be accorded to applica-  
6 tions for permits to conduct research, captive breed-  
7 ing, or education on alternative methods and tech-  
8 nologies, and the comparative costs of the methods  
9 and technologies, to reduce the incidental taking as  
10 described in paragraph (1)(B) of an endangered spe-  
11 cies or a threatened species for which the employ-  
12 ment of existing methods or technologies for avoid-  
13 ance of the incidental taking entails significant costs  
14 for non-Federal persons.

15 “(6) EDUCATIONAL OR PROPAGATION PER-  
16 MITS.—(A) A permit under paragraph (1)(A)(ii) or  
17 (iv) shall be issued if—

18 “(i)(I) the applicant holds a current and  
19 valid license as an exhibitor under the Animal  
20 Welfare Act (7 U.S.C. 2131 et seq.);

21 “(II) in the case of a permit under para-  
22 graph (1)(A)(ii), the applicant maintains a pub-  
23 lic display or exhibition of living wildlife de-  
24 scribed in that paragraph; and



1           “(III) viewing of the public display or exhi-  
2           bition is not limited or restricted other than by  
3           charging an admission fee; or

4           “(ii) in the case of a permit under para-  
5           graph (1)(A)(iv), the applicant has dem-  
6           onstrated the ability to use propagation tech-  
7           niques that result in increases in the popu-  
8           lations of species held in captivity for eventual  
9           release into the wild, maintenance of live speci-  
10          mens, or falconry purposes.

11          “(B)(i) The Secretary shall issue a permit with-  
12          in 30 days from the effective date of this subpara-  
13          graph to any qualified organization or person who  
14          has demonstrated the ability to handle or recover  
15          species for a minimum of 15 years or who has at  
16          least 10 permits in the aggregate issued pursuant to  
17          this Act or the other laws listed in subparagraph  
18          (H).

19          “(ii) The Secretary shall issue a permit within  
20          90 days of receipt of a completed application from  
21          any qualified organization or person who currently  
22          does not hold any permit but who has demonstrated  
23          the ability to handle or recover species for a mini-  
24          mum of 15 years of who has received at least 10  
25          permits in the aggregate and who has not violated

1 any terms or conditions of any permits previously is-  
2 sued pursuant to this Act or the laws listed in sub-  
3 paragraph (H).

4 “(C) A permit referred to in paragraph  
5 (1)(A)(ii) shall be for a term of not less than 6  
6 years.

7 “(D) A permit referred to in paragraph  
8 (1)(A)(ii) shall also authorize the permittee to im-  
9 port, export, sell, purchase, or otherwise transfer  
10 possession of the affected species.

11 “(E) The Secretary shall revoke a permit re-  
12 ferred to in paragraph (1)(A)(ii) if the Secretary de-  
13 termines that the permittee—

14 “(i) no longer meets the requirements of  
15 subparagraph (A) and is not reasonably likely  
16 to meet the requirements in the near future;

17 “(ii) is not complying with the terms and  
18 conditions of the permit; or

19 “(iii) is engaging in an activity likely to  
20 jeopardize the continued existence of the species  
21 subject to the permit.

22 “(F) The Secretary may require an annual re-  
23 port on the activities authorized by a general permit,  
24 but may not require reports more frequently than  
25 annually.

1           “(G) A permit authorized in this paragraph  
2 shall be the only permit required for the activities  
3 authorized therein, and may cover activities for one  
4 or more species or taxa simultaneously.

5           “(H) The authorizations for any activities per-  
6 mitted under this paragraph or permitted by the  
7 Bald Eagle Protection Act (16 U.S.C. 668–668d),  
8 the Fish and Wildlife Conservation Act of 1980 (16  
9 U.S.C. 2901–2911), the Lacey Act Amendments of  
10 1981 (18 U.S.C. 42; 16 U.S.C. 3371–3378), the  
11 Marine Mammal Protection Act of 1972 (16 U.S.C.  
12 1361–1407), the Migratory Bird Conservation Act  
13 (16 U.S.C. 715–715d), the Migratory Bird Treaty  
14 Act (16 U.S.C. 703–712), or the Wild Bird Con-  
15 servation Act of 1992 (Public Law 102–440) shall  
16 be consolidated into a general permit to cover all au-  
17 thorized activities, notwithstanding any law or regu-  
18 lation to the contrary.”.

19       (b) EXCEPTIONS FOR WILDLIFE BRED IN CAP-  
20 TIVITY.—Section 10, as amended by section 204(c) of this  
21 Act, is amended by adding at the end the following new  
22 subsection:

23       “(I) WILDLIFE BRED IN CAPTIVITY.—For the pur-  
24 poses of this Act or any regulation adopted pursuant to  
25 this Act, the terms ‘bred in captivity’ or ‘captive-bred’,

1 with respect to wildlife, means wildlife, including eggs,  
2 born or otherwise produced in captivity from parents that  
3 mated or otherwise transferred gametes in captivity if re-  
4 production is sexual, or from parents that were in captivity  
5 when development of the progeny began, if development  
6 is asexual. Such progeny shall be considered domestic fish  
7 or wildlife for all purposes and shall not come under the  
8 provisions and prohibitions of this Act and the laws listed  
9 in subsection (a)(6)(H) unless intentionally and perma-  
10 nently released to the wild. Any person holding any fish  
11 or wildlife or their progeny as described in this subsection  
12 must be able to demonstrate that such fish or wildlife do,  
13 in fact, qualify under the provision of this subsection, and  
14 shall maintain and submit to the Secretary, on request,  
15 such inventories, documentation, and records as the Sec-  
16 retary may by regulation require as being reasonable and  
17 appropriate to carry out the purposes of this subsection.  
18 Such requirements shall not unnecessarily duplicate the  
19 requirements of other rules and regulations promulgated  
20 by the Secretary.”.

21 **SEC. 206. MAINTENANCE OF AQUATIC HABITATS FOR LIST-**  
22 **ED SPECIES.**

23 The Endangered Species Act of 1973 (16 U.S.C.  
24 1851 et seq.) is amended by adding at the end the follow-  
25 ing new section:

1 "RECOGNIZING NET BENEFITS TO AQUATIC SPECIES

2 "SEC. 20. (a) ENCOURAGING NET BENEFITS.—In  
3 carrying out this Act, if the number of individual members  
4 of an endangered species or threatened species exiting an  
5 aquatic habitat area under the control, authority or owner-  
6 ship of a non-Federal person is equal to or greater than  
7 the number of individual members of the species entering  
8 such area, the Secretary shall not require, provide for, or  
9 recommend the imposition of any restriction or obligation  
10 on the activity of the non-Federal person in a manner  
11 which would require the non-Federal person to support the  
12 maintenance of any greater number of individual members  
13 of the species than that which enters such aquatic habitat  
14 area.

15 "(b) CONSIDERATION OF HATCHERY POPU-  
16 LATIONS.—In calculating the number of individual mem-  
17 bers of a species entering and exiting a specific aquatic  
18 habitat area pursuant to this section, the Secretary shall  
19 consider hatchery populations.

20 "(c) LIMITATIONS.—The Secretary shall not require,  
21 provide for, or recommend the imposition of any restric-  
22 tion or obligation on the activity of any non-Federal per-  
23 son in an aquatic habitat area to remedy adverse impacts  
24 on a species resulting from activities of individuals other  
25 than the non-Federal person."

1 **SEC. 207. COMPLIANCE WITH INTERNATIONAL REQUIRE-**  
2 **MENTS AND TREATIES.**

3 (a) **RESPECTING THE SOVEREIGNTY OF OTHER NA-**  
4 **TIONS.**—Section 8 (16 U.S.C. 1537) is amended by adding  
5 at the end the following new subsection:

6 “(e) **ENCOURAGEMENT OF FOREIGN PROGRAMS.**—  
7 Any action taken by the Secretary pursuant to this Act  
8 in regard to a foreign species which occurs in a country  
9 which is a party to the Convention—

10 “(1) shall be done in cooperation with the wild-  
11 life conservation authorities of such country; and

12 “(2) shall not obstruct any wildlife conservation  
13 program of such country unless the Secretary can  
14 show, based on adequate findings supported by sub-  
15 stantial evidence, that the country’s wildlife con-  
16 servation program for the species in question is not  
17 consistent with the Convention.”.

18 (b) **COMPLIANCE WITH THE CONVENTION.**—Section  
19 8A (16 U.S.C. 1537a) is amended by adding at the end  
20 the following new subsections:

21 “(f) **NONDUPLICATION OF FINDINGS.**—The Sec-  
22 retary, in making the findings required in paragraph 3(a)  
23 of Article III of the Convention, shall limit such findings  
24 to the purpose of the importation, and shall not duplicate  
25 the findings required to be made by the exporting nation

1 except for good cause based on adequate findings sup-  
2 ported by substantial evidence.

3 “(g) RELATIONSHIP OF PROTECTIVE REGULATIONS  
4 TO THE CONVENTION.—In determining the provisions of  
5 protective regulations pursuant to section 4(d) of this Act  
6 when such regulations relate to a foreign species—

7 “(1) the Secretary may not prohibit any act  
8 that is permissible under the Convention, notwith-  
9 standing Article XIV of the Convention;

10 “(2) the Secretary shall, prior to publishing a  
11 proposal for such protective regulations in the Fed-  
12 eral Register, transmit the full text and a complete  
13 description of the proposed regulation directly to the  
14 appropriate wildlife management authority of that  
15 country, in the language of that country, with at  
16 least 180 days allowed for review and comment, the  
17 180 days shall be counted from the date of delivery  
18 of the materials to the wildlife authorities of the  
19 country;

20 “(3) such transmission must be accompanied  
21 by—

22 “(A) a plain-language explanation of the  
23 reasons for and purpose of the proposed regula-  
24 tion;

1           “(B) an analysis of the anticipated bene-  
2           ficial impact or detrimental impact of the regu-  
3           lation on the economic, social, and cultural uti-  
4           lization of the species, if any, and of the bene-  
5           ficial or detrimental impact on the resource  
6           management and conservation programs of that  
7           country; and

8           “(C) a summary of the literature reviewed  
9           and experts consulted by the Secretary in re-  
10          gard to the species involved, and a summary of  
11          the Secretary’s findings based on that review  
12          and consultation;

13          “(4) the Secretary shall enter into discussions  
14          with appropriate wildlife management officials of the  
15          countries to which he has sent the transmission re-  
16          ferred to in the previous paragraph, and if those of-  
17          ficials feel that further studies of the species are in-  
18          dicated the Secretary shall assist in finding the  
19          funds for such studies and in carrying out the stud-  
20          ies; and

21          “(5) the Secretary must obtain the written con-  
22          currence of all the nations contacted, and if such  
23          concurrence is not obtained the Secretary may not  
24          issue the proposed regulation except by an order  
25          submitted to and approved by the President.”.



1 (c) CONSERVATION OF THREATENED SPECIES.—Sec-  
2 tion 9 (16 U.S.C. 1538), as amended by section 206 of  
3 this Act, is amended by adding at the end the following  
4 new subsection:

5 “(i) IMPORTATION AND EXPORTATION.—

6 “(1) LIMITATION ON IMPORTATION.—The pro-  
7 hibition on importation in subsection (a) of this sec-  
8 tion shall not apply to a specimen of a threatened  
9 species taken for an inherently limited use in accord-  
10 ance with the laws of a foreign nation and accom-  
11 panied by an export permit issued by that nation or  
12 an equivalent document. For the purpose of this  
13 subsection, the term ‘inherently limited use’ means  
14 scientific collection, live export for captive breeding,  
15 sport hunting, and falconry.

16 “(2) REGULATIONS FOR SHIPPING UNDER CON-  
17 VENTION.—(A) The Secretary shall adopt regula-  
18 tions regarding the finding required by the Conven-  
19 tion that live specimens exported from the United  
20 States will be so prepared as to minimize the risk  
21 of injury, damage to health, or cruel treatment.  
22 Such regulations shall provide clear, consistent and  
23 reliable guidance to exporters.

24 “(B) In any instance in which the Secretary be-  
25 lieves that a shipment for export is not prepared in

1 accordance with the regulations, a detailed written  
2 notice of noncompliance shall be issued to the ex-  
3 porter. The notice shall contain recommendations as  
4 to how future shipments should be modified in order  
5 to come into compliance with the regulations. The  
6 notice shall go into effect 30 days after receipt by  
7 the shipper, subject to appeal to an Administrative  
8 Law Judge or a court. The filing of an appeal shall  
9 toll the effectiveness of the notice. The issue of non-  
10 compliance may be appealed as well as the issue of  
11 the appropriateness of the recommendation for com-  
12 pliance.”.

13 **SEC. 208. INCENTIVES FOR PROTECTION OF MARINE SPE-**  
14 **CIES.**

15 (a) IN GENERAL.—Section 10 (16 U.S.C. 1539), as  
16 amended by section 205(b) of this Act, is amended by add-  
17 ing at the end the following new subsection:

18 “(m) INCENTIVES.—(1) The Secretary shall exempt,  
19 under such terms and conditions as the Secretary may  
20 prescribe by regulation, any operator of a trawl vessel re-  
21 quired to use a turtle excluder device under regulations  
22 promulgated under this Act from such requirement if such  
23 operator agrees to support a conservation program ap-  
24 proved under paragraph (2) and such support is deter-  
25 mined to be appropriate under paragraph (4).

1       “(2) No later than 180 days after the effective date  
2 of this subsection and each year thereafter, the Secretary  
3 shall—

4           “(A) review all those programs intended to con-  
5 serve the endangered species and threatened species  
6 of sea turtles found in the Gulf of Mexico and along  
7 the Atlantic seaboard, including those programs in-  
8 volving protection of nesting beaches in other na-  
9 tions;

10          “(B) approve any such program determined by  
11 the Secretary to be of significant benefit to the re-  
12 covery of the species of such sea turtles under this  
13 subsection; and

14          “(C) publish notice of such determination in the  
15 Federal Register.

16       “(3)(A) Any person or group of persons operating  
17 trawl vessels may submit in writing a request to the Sec-  
18 retary for an exemption under this subsection.

19       “(B) Not later than 60 days after receipt of such re-  
20 quest the Secretary shall provide such person or group  
21 written notice of the issuance or denial of such request.

22       “(4) The Secretary shall determine that the support  
23 offered by an operator in a written request submitted  
24 under paragraph (3) is appropriate if the benefits provided  
25 by such support to the recovery of such species exceed any

1 harm to the recovery of such species incurred as a result  
2 of the operator not using turtle excluder devices under an  
3 exemption provided under this subsection.

4 “(5) The Secretary shall prescribe such regulations  
5 as the Secretary considers necessary and appropriate to  
6 carry out the purposes of this subsection.”.

7 (b) INCIDENTAL TAKE STATEMENTS.—Section 7(b)  
8 (16 U.S.C. 1536(b)) is amended by adding at the end of  
9 paragraph (4)(C)(ii) the following: “including incentives  
10 to encourage the support of conservation programs ap-  
11 proved under section 10(k),”.

12 **TITLE III—IMPROVING SCI-**  
13 **ENTIFIC INTEGRITY OF LIST-**  
14 **ING DECISIONS AND PROCE-**  
15 **DURES**

16 **SEC. 301. IMPROVING THE VALIDITY AND CREDIBILITY OF**  
17 **DECISIONS.**

18 (a) **BASING LISTINGS ON CREDIBLE SCIENCE.**—

19 (1) **LISTING DETERMINATIONS.**—Subsections

20 (a) and (b) (1) and (2) of section 4 (16 U.S.C.  
21 1533) are amended to read as follows:

22 “(a) **GENERALLY.**—The Secretary shall by regulation  
23 promulgated in accordance with subsection (b) determine  
24 whether any species is an endangered species or a threat-  
25 ened species because of any of the following factors:

1           “(1) The present or threatened loss of its habi-  
2           tat.

3           “(2) Overutilization for commercial, rec-  
4           reational, scientific, or educational purposes.

5           “(3) Disease or predation.

6           “(4) The inadequacy of existing Federal, State,  
7           and local government regulatory mechanisms.

8           “(5) Other natural or manmade factors affect-  
9           ing its continued existence.

10          “(b) SECRETARIAL DETERMINATIONS.—

11           “(1) BASIS FOR DETERMINATION.—(A) The  
12          Secretary shall make determinations required by  
13          subsection (a)(1) solely on the basis of the best sci-  
14          entific and commercial data available to the Sec-  
15          retary after conducting a review of the status of the  
16          species and after soliciting and fully considering the  
17          best scientific and commercial data available con-  
18          cerning the status of a species from any affected  
19          State or any interested non-Federal person, and tak-  
20          ing into account those efforts being made by any  
21          State, any political subdivision of a State, or any  
22          non-Federal person or conservation organization, to  
23          protect such species, whether by predator control,  
24          protection of habitat and food supply, or other con-  
25          servation practices, within any area under its juris-

1 diction, or on the high seas, and shall accord greater  
2 weight, consideration, and preference to empirical  
3 data rather than projections or other extrapolations  
4 developed through modeling.

5 “(B) In making a determination whether a spe-  
6 cies is an endangered species or a threatened species  
7 under this section, the Secretary shall fully consider  
8 populations of the species that are bred through pri-  
9 vate sector, university, and Federal, State, and local  
10 government breeding programs for release in the  
11 habitat of the species. In the case of fish species, the  
12 bred populations referred to in the preceding sen-  
13 tence shall include hatchery populations.

14 “(2) CONSIDERATION OF STATE RECOMMENDA-  
15 TIONS.—In making a determination pursuant to  
16 paragraph (1), the Secretary shall give consideration  
17 to species which have been identified as in danger of  
18 extinction, or likely to become so within the foresee-  
19 able future, by any State agency that is responsible  
20 for the conservation of fish or wildlife or plants.”.

21 (2) LISTING FOREIGN SPECIES.—Section 4(b)  
22 (16 U.S.C. 1533(b)), as amended by subsection (f)  
23 of this section, is amended by adding at the end the  
24 following new paragraph:

1           “(10) FOREIGN SPECIES.—(A) In determining  
2 under subsection (a) whether a foreign species is an  
3 endangered species or a threatened species, the Sec-  
4 retary shall not determine that a species that is list-  
5 ed under the Convention is endangered or threat-  
6 ened unless he makes an adequate finding, sup-  
7 ported by substantial evidence, that the Convention  
8 does not provide adequate regulation.

9           “(B) The Secretary shall, prior to publishing a  
10 proposal in the Federal Register to determine that  
11 a foreign species is endangered or threatened, trans-  
12 mit the full text and a complete description of the  
13 proposed listing directly to the appropriate wildlife  
14 management authority of that nation, in the lan-  
15 guage of that nation, with at least 180 days allowed  
16 for review and comment. The 180 days shall be  
17 counted from the date of delivery of the materials  
18 supporting the proposed listing to the wildlife au-  
19 thorities of the country.

20           “(C) Such transmission must be accompanied  
21 by—

22           “(i) a plain-language explanation of the ob-  
23 jective criteria for and purpose of the proposed  
24 listing;

1           “(ii) an analysis of the anticipated bene-  
2           ficial impact or detrimental impact of the list-  
3           ing on the economic, social, and cultural utiliza-  
4           tion of the species, if any, and of the beneficial  
5           or detrimental impact on the resource manage-  
6           ment and conservation programs of that nation;  
7           and

8           “(iii) a summary of the literature reviewed  
9           and experts consulted by the Secretary in re-  
10          gard to the species involved, and a summary of  
11          the Secretary’s findings based on that review  
12          and consultation.

13          “(D) The Secretary shall enter into discussions  
14          with the appropriate wildlife management officials of  
15          the nations to which he has sent the transmission  
16          referred to in subparagraph (C). If those officials  
17          feel that further studies of the species are indicated,  
18          the Secretary shall assist in finding the funds for  
19          such studies and in carrying out the studies.

20          “(E) The Secretary must obtain the written  
21          concurrence of all the nations contacted. If such con-  
22          currence is not obtained, the Secretary may not  
23          issue the proposed regulation except by an order  
24          submitted to and approved by the President.”.



1 (b) DEFINITIONS.—Section 3 (16 U.S.C. 1532) is  
2 amended—

3 (1) by adding after paragraph (1) the following  
4 new paragraph:

5 “(2) The term ‘best scientific and commercial  
6 data available’ means factual information, including  
7 but not limited to peer reviewed scientific informa-  
8 tion obtainable from any source, including govern-  
9 mental and nongovernmental sources, which has  
10 been to the maximum extent feasible verified by field  
11 testing.”;

12 (2) by adding after paragraph (7) (as redesign-  
13 nated by section 102(a)(1) of this Act) the following  
14 new paragraphs:

15 “(8) The term ‘distinct population of national  
16 interest’ means a distinct population of a vertebrate  
17 species that is not otherwise an endangered species  
18 or threatened species in the United States, Canada,  
19 or Mexico, but which because of its value to the Na-  
20 tion as a whole has been designated by Congress as  
21 needing protection under this Act.

22 “(8a) The term ‘foreign species’ means a spe-  
23 cies naturally occurring outside the territory of the  
24 United States, but does not include any marine spe-  
25 cies, any species having a significant population oc-

1 curring in the wild within the United States, or any  
2 migratory species whose migration route includes  
3 United States territory.”;

4 (3) by adding after paragraph (13) (as redesign-  
5 nated by section 102(a)(1) of this Act) the following  
6 new paragraph:

7 “(14) The term ‘imminent threat to the exist-  
8 ence of’, with respect to a species, means, as deter-  
9 mined by the Secretary under section 4(b)(7) or the  
10 President under section 5(e)(2) solely on the basis of  
11 the best scientific and commercial data available,  
12 that there is a significant likelihood that the species  
13 will become extinct, or will be placed on an irrevers-  
14 ible course to extinction, during the 2-year period  
15 beginning on the date of the determination that the  
16 species is an endangered species or a threatened spe-  
17 cies, unless the species is accorded fully the protec-  
18 tion available under this Act during such period.”;

19 (4) by amending paragraph (22) (as redesign-  
20 nated by section 102(a)(1) of this Act) to read as  
21 follows:

22 “(22) The term ‘Secretary’ means, except as  
23 otherwise herein provided, the Secretary of the Inte-  
24 rior, except that with respect to the enforcement of  
25 the provisions of this Act and the Convention which

1       pertain to the importation or exportation of terres-  
2       trial plants, the term also means the Secretary of  
3       Agriculture.”; and

4               (5) by amending paragraph (23) (as redesignig-  
5       nated by section 102(a)(1) of this Act) to read as  
6       follows:

7               “(23) The term ‘species’ includes any sub-  
8       species of fish or wildlife or plants, and any distinct  
9       population of national interest of any species or ver-  
10      tebrate fish or wildlife which interbreeds when ma-  
11      ture.”.

12      (c) SOLICITING SCIENTIFIC INFORMATION.—Section  
13      4(b)(3) (16 U.S.C. 1533(b)(3)), as amended by sections  
14      303(a), 304(a), 305(a), and 306 of this Act, is amended  
15      by adding at the end the following new subparagraph:

16              “(F) Before any further action is taken in ac-  
17      cordance with this paragraph, the Secretary shall  
18      publish in the Federal Register a solicitation for fur-  
19      ther information regarding the status of a species  
20      which is the subject of a proposed rule to list the  
21      species as an endangered species or threatened spe-  
22      cies, including current population, populations  
23      trends, current habitat, Federal conservation lands  
24      which could provide habitat for the species, food  
25      sources, predators, breeding habits, captive breeding

1 efforts, commercial, nonprofit, avocational, or vol-  
2 untary conservation activities, or other pertinent in-  
3 formation which may assist in making a determina-  
4 tion under this section. The solicitation shall give a  
5 time limit within which to submit the information  
6 which shall be not less than 180 days. The time  
7 limit shall be extended for an additional 180 days at  
8 the request of any person who submits a request for  
9 such extension along with the reasons therefor. The  
10 Secretary in making the determination required in  
11 this subsection, shall give equal weight to the infor-  
12 mation submitted in accordance with this para-  
13 graph.”.

14 (d) EMERGENCY LISTINGS.—Section 4(b)(7) (16  
15 U.S.C. 1533(b)(7)) is amended—

16 (1) by striking the matter preceding subpara-  
17 graph (A) and inserting the following:

18 “(7) EMERGENCY REGULATIONS.—Neither  
19 paragraph (4), (5), or (6) of this subsection nor sec-  
20 tion 553 of title 5, United States Code, shall apply  
21 to any regulation issued by the Secretary in regard  
22 to any emergency posing an imminent threat to the  
23 existence of any species of fish or wildlife or plants,  
24 but only if—”; and

1           (2) by adding at the end the following new sen-  
2           tence: “The Secretary may not delegate the final de-  
3           cision to issue an emergency regulation under this  
4           paragraph.”.

5           (e) USING BEST DATA.—Section 4(b)(8) (16 U.S.C.  
6           1533(b)(8)) is amended by striking “the data” and insert-  
7           ing “the best scientific and commercial data”.

8           (f) IDENTIFYING DATA USED FOR DECISIONS.—Sec-  
9           tion 4(b) (16 U.S.C. 1533(b)) is amended by adding at  
10          the end the following new paragraph:

11           “(9) PUBLICATION IN FEDERAL REGISTER.—

12           (A) The Secretary shall identify and publish in the  
13           Federal Register with each proposed rule under  
14           paragraph (1) or section 5(i) a description of—

15                   “(i) all data that are to be considered in  
16                   making the determination under the subsection  
17                   to which the proposed rule relates and that  
18                   have yet to be collected or field verified;

19                   “(ii) data that are necessary to make de-  
20                   terminations and that can be collected prior to  
21                   any determination; and

22                   “(iii) data that are necessary to ensure the  
23                   scientific validity of the determination, and each  
24                   deadline for collecting these data.

1           “(B) In making a determination pursuant to  
2 paragraph (1) or section 5(i), the Secretary shall  
3 collect and consider the data identified and described  
4 pursuant to subparagraph (A)(ii).

5           “(C) The Secretary shall identify and publish in  
6 the Federal Register with each final rule promul-  
7 gated under paragraph (1) or section 5(i)—

8           “(i) a description of any data that have  
9 not been collected and considered in the deter-  
10 mination to which the rule relates and that are  
11 necessary to ensure the continued scientific va-  
12 lidity of the determination; and

13           “(ii) each deadline by which the Secretary  
14 shall collect and consider the data in accordance  
15 with subparagraph (D).

16           “(D) Not later than the deadline published by  
17 the Secretary pursuant to subparagraph (C)(ii), the  
18 Secretary shall—

19           “(i) collect the data referred to in each  
20 paragraph;

21           “(ii) provide an opportunity for public re-  
22 view and comment on the data;

23           “(iii) consider the data after the review  
24 and comment; and

1                   “(iv) publish in the Federal Register the  
2                   results of that consideration and a description  
3                   of and schedule for any actions warranted by  
4                   the data.”.

5           (g) JUDICIAL REVIEW.—Section 4 (16 U.S.C. 1533),  
6 as amended by section 302 of this Act, is amended by add-  
7 ing at the end the following new subsection:

8           “(j) JUDICIAL REVIEW OF DETERMINATIONS.—Any  
9 determination with regard to whether a species is a threat-  
10 ened species or endangered species shall be subject to a  
11 de novo judicial review with the court determining whether  
12 the decision is supported by a preponderance of the evi-  
13 dence.”.

14 **SEC. 302. PEER REVIEW.**

15           Section 4 (16 U.S.C. 1533) is amended by adding  
16 after subsection (h), as redesignated by section 507(b)(2)  
17 of this Act, the following new subsection:

18           “(i) PEER REVIEW REQUIREMENT.—

19                   “(1) DEFINITIONS.—In this subsection:

20                           “(A) The term ‘action’ means—

21                                   “(i) the determination that a species  
22                                   is an endangered species or a threatened  
23                                   species under subsection (a);

24                                   “(ii) the determination under sub-  
25                                   section (a) that an endangered species or

1 a threatened species be removed from any  
2 list published under subsection (c)(1);

3 “(iii) the designation, or revision of  
4 the designation, of critical habitat for an  
5 endangered species or a threatened species  
6 under section 5(i); and

7 “(iv) the determination that a pro-  
8 posed action is likely to jeopardize the con-  
9 tinued existence of a listed species and the  
10 proposal of any reasonable and prudent al-  
11 ternatives by the Secretary under section  
12 7(b)(3).

13 “(B) The term ‘qualified individual’ means  
14 an individual with expertise in the biological  
15 sciences—

16 “(i) who is by virtue of advanced edu-  
17 cation, training, or avocational, academic,  
18 commercial, research, or other experience  
19 competent to review the adequacy of any  
20 scientific methodology supporting the ac-  
21 tion, the validity of any conclusions drawn  
22 from the supporting data, and the com-  
23 petency of the individual who conducted  
24 the research or prepared the data;



1                   “(ii) who is not otherwise employed by  
2                   or under contract to the Secretary of the  
3                   Interior; and

4                   “(iii) who has not participated in the  
5                   listing decision.

6                   “(2) LIST OF PEER REVIEWERS.—In order to  
7                   provide a substantial list of individuals who on a vol-  
8                   untary basis are available to participate in peer re-  
9                   view actions, the Secretary shall, through the Fed-  
10                  eral Register, through scientific and commercial  
11                  journals, and through the National Academy of  
12                  Sciences and other such institutions, seek nomina-  
13                  tions of persons who agree to peer review action  
14                  upon appointment by the Secretary.

15                  “(3) APPOINTMENT OF PEER REVIEWERS.—Be-  
16                  fore any action shall become final, the Secretary  
17                  shall appoint, from among the list prepared in ac-  
18                  cordance with paragraph (2), not more than 2 quali-  
19                  fied individuals who shall review, and report to the  
20                  Secretary on, the scientific information and analyses  
21                  on which the proposed action is based. The Governor  
22                  of each State in which the species is located that is  
23                  the subject of the proposal, may appoint up to 2  
24                  qualified individuals to conduct peer review of the  
25                  action. If any individual declines the appointment,

1 the Secretary or the Governor shall appoint another  
2 individual to conduct the peer review.

3 “(4) DATA PROVIDED TO PEER REVIEWER.—  
4 The Secretary shall make available to each person  
5 conducting peer review all scientific information  
6 available regarding the species which is the subject  
7 of the peer review. The Secretary shall not indicate  
8 to a peer reviewer the name of any person that sub-  
9 mitted a petition for listing or delisting that is re-  
10 viewed by the reviewer.

11 “(5) OPINION OF PEER REVIEWERS.—The peer  
12 reviewer shall give his or her opinion with regard to  
13 any technical or scientific deficiencies in the pro-  
14 posal, whether the methodology and analysis sup-  
15 porting the petition conform to the standards of the  
16 academic and scientific community, and whether the  
17 proposal is supported by sufficient credible evidence.

18 “(6) PUBLICATION OF PEER REVIEW RE-  
19 PORT.—The Secretary shall publish with any final  
20 regulation implementing an action a summary of the  
21 report of the peer review panel noting points of dis-  
22 agreement between peer reviewers, if any, and the  
23 response of the Secretary to the report.”

**1 SEC. 303. MAKING DATA PUBLIC.**

2 (a) PUBLIC DATA.—Section 4(b)(3) (16 U.S.C.  
3 1533(b)(3)), as amended by sections 304(a), 305(a), and  
4 306 of this Act, is amended by adding at the end the fol-  
5 lowing new subparagraph:

6 “(E)(i) All data or information considered by  
7 the Secretary in making the determination to list as  
8 provided in this section, shall be considered public  
9 information and shall be subject to section 552 of  
10 title 5, United States Code (commonly referred to as  
11 the ‘Freedom of Information Act’) unless the Sec-  
12 retary, for good cause, determines that the informa-  
13 tion must be kept confidential. The burden shall be  
14 on the Secretary to prove that such information  
15 shall be confidential and such decision shall be  
16 reviewable by a district court of competent jurisdic-  
17 tion, which shall review the decision in chambers.  
18 Good cause can include that the information is of a  
19 proprietary nature or that release of the location of  
20 the species may endanger the species further.

21 “(ii) The Secretary shall minimize releasing the  
22 identification of particular private property as habi-  
23 tat for a species which is determined to be an endan-  
24 gered species or threatened species or proposed to be  
25 determined to be an endangered species or threat-  
26 ened species, unless the Secretary first notifies the

1 owner thereof and receives his or her consent, or the  
2 information is otherwise public information.”.

3 (b) PUBLIC HEARINGS.—Section 4(b) (16 U.S.C.  
4 1533(b)) is amended—

5 (1) in paragraph (5) (as amended by section  
6 305(b) of this Act) by adding at the end the follow-  
7 ing new subparagraph:

8 “(E) promptly hold at least 1 hearing in each  
9 State in which the species proposed for determina-  
10 tion as an endangered species or a threatened spe-  
11 cies is believed to occur, and in a location that is as  
12 close as possible to the center of the habitat of such  
13 species in such State.”; and

14 (2) in paragraph (6) by amending all that pre-  
15 ceedes subparagraph (B) to read as follows:

16 “(6) PUBLICATION OF DETERMINATION.—(A)  
17 Within the one-year period beginning on the date on  
18 which general notice is published in accordance with  
19 paragraph (5)(A)(i) regarding a proposed regulation,  
20 the Secretary shall publish in the Federal Register,  
21 if a determination as to whether a species is an en-  
22 dangered species or a threatened species is involved,  
23 either—

24 “(i) a final regulation to implement such  
25 determination,

1           “(ii) a final regulation to implement such  
2           revision or a finding that such revision should  
3           not be made,

4           “(iii) notice that such one-year period is  
5           being extended under subparagraph (B)(i), or

6           “(iv) notice that the proposed regulation is  
7           being withdrawn under subparagraph (B)(ii),  
8           together with the finding on which such with-  
9           drawal is based.”.

10       (c) NOTICE OF HEARINGS.—Section 14 is amended  
11 to read as follows:

12 **“SEC. 14. NOTICE OF HEARINGS.**

13       “Except as otherwise provided by this Act, the Sec-  
14 retary shall provide notice of any hearing or other public  
15 meeting at which public comment is accepted under this  
16 Act by publication in the Federal Register and in a news-  
17 paper of general circulation in the location of the hearing  
18 or meeting at least 30 days prior to the hearing or meet-  
19 ing.”.

20 **SEC. 304. IMPROVING THE PETITION AND DESIGNATION**  
21 **PROCESSES.**

22       (a) PETITIONS TO LIST.—Section 4(b)(3) (16 U.S.C.  
23 1533(b)(3)) is amended to read as follows:

24       “(3) PETITIONS.—(A) A petition submitted to  
25       the Secretary asserting that a species is a threat-

1        ened species or endangered species and requesting  
2        that the Secretary make a determination to that ef-  
3        fect shall contain at a minimum the following:

4                “(i) Information on the current population  
5                and range of the species.

6                “(ii) Any information on efforts to field  
7                test the population estimates on the species.

8                “(iii) If literature from scientific or other  
9                journals, dissertations or other such scientific  
10               writings of another person are submitted, they  
11               must be accompanied by an affidavit that the  
12               literature or writings have been peer reviewed  
13               along with the names of the persons performing  
14               the peer review.

15               “(iv) The qualifications of any person as-  
16               serting expertise on the species or status of the  
17               species.

18               “(v) Information about the demonstrated  
19               habitat needs of the species, along with the  
20               known occupied habitat of the species.

21               “(vi) Known causes of the species decline.

22               “(B) Petitions to add a species to, or to remove  
23               a species from, either of the lists published under  
24               subsection (c)(1) shall be submitted in accordance  
25               with section 553(e) of title 5, United States Code.

1       The Secretary may commence a review of the status  
2       of the species concerned consistent with the prior-  
3       ities set by the Secretary for the listing of species.  
4       The Secretary shall promptly publish any finding  
5       made under this subparagraph in the Federal Reg-  
6       ister.”.

7       (b) CONFORMING AMENDMENTS.—Section 4(g), as  
8       redesignated by section 507(b)(2), is amended—

9             (1) by striking paragraph (2); and

10            (2) by redesignating paragraphs (3) and (4) in  
11       order as paragraphs (2) and (3).

12   **SEC. 305. GREATER STATE INVOLVEMENT.**

13       (a) STATE CONSULTATION ON PETITIONS.—Section  
14       4(b)(3) (16 U.S.C. 1533(b)(3)), as amended by section  
15       304(a) of this Act, is amended by adding after subpara-  
16       graph (B) the following subparagraph:

17             “(C) At the time the review provided in sub-  
18       paragraph (B) is commenced—

19             “(i) the Secretary shall contact the Gov-  
20       ernor of each State in which the proposed spe-  
21       cies is located and shall solicit from the Gov-  
22       ernor information about the action requested in  
23       the petition in that State necessary to render a  
24       decision and shall solicit the advice of the Gov-  
25       ernor on whether the status of species merits

1 the action petitioned for, and if the Governor  
2 advises that the petition action is not warranted  
3 and thereafter the Secretary proceeds with the  
4 action, the Secretary shall have the burden of  
5 showing that the information submitted by the  
6 Governor is incorrect and that the action is  
7 warranted; and

8 “(ii) the Secretary shall, to the maximum  
9 extent feasible, require by field testing, the ver-  
10 ification of the information presented regarding  
11 the status of the species.”.

12 (b) REGULATIONS TO IMPLEMENT DETERMINA-  
13 TIONS.—Section 4(b)(5) (16 U.S.C. 1533(b)(5)) is  
14 amended to read as follows:

15 “(5) NOTICE REQUIRED.—With respect to any  
16 regulation proposed by the Secretary to implement a  
17 determination referred to in subsection (a)(1) of this  
18 section, the Secretary shall—

19 “(A) not less than 90 days before the ef-  
20 fective date of the regulation—

21 “(i) publish a general notice and the  
22 complete text of the proposed regulation in  
23 the Federal Register, and

24 “(ii) give actual notice of the proposed  
25 regulation (including the complete text of



1           the regulation) to the Governor of each  
2           State in which the species is believed to  
3           occur, and to each county, or equivalent ju-  
4           risdiction in which the species is believed  
5           to occur, and consult with such agency,  
6           and each such jurisdiction, thereon;

7           “(B) in cooperation with the Secretary of  
8           State, give notice of the proposed regulation to  
9           each foreign nation in which the species is be-  
10          lieved to occur or whose citizens harvest the  
11          species on the high seas, and consult with such  
12          nation thereon;

13          “(C) give notice of the proposed regulation  
14          to any person who requests such notice, any  
15          person who has submitted additional data, each  
16          State and local government within which the  
17          species is believed to occur or which is likely to  
18          experience any effects of any measures to pro-  
19          tect the species under this Act, and such profes-  
20          sional scientific organizations as the Secretary  
21          deems appropriate; and

22          “(D) publish a summary of the proposed  
23          regulation in a newspaper of general circulation  
24          in each area of the United States in which the  
25          species is believed to occur.”.

1 (c) STATE CONSULTATION ON FINAL DETERMINA-  
2 TION.—Section 4(h), as redesignated by section 507(b)(2)  
3 of this Act, is amended to read as follows:

4 “(h) SUBMISSION TO STATE AGENCY OF JUSTIFICA-  
5 TION FOR REGULATIONS INCONSISTENT WITH STATE  
6 AGENCY’S COMMENTS OR PETITION.—If, in the case of  
7 any regulation proposed by the Secretary under the au-  
8 thority of this section, a State agency which consulted with  
9 the Secretary in accordance with subsection (b)(5)(A)(ii)  
10 of this section files comments disagreeing with all or part  
11 of the proposed regulation, the Secretary shall not issue  
12 a final regulation which is in conflict with such comments  
13 until the Secretary further consults with the President, or  
14 if the Secretary fails to adopt a regulation pursuant to  
15 an action petitioned by a State agency under subsection  
16 (b)(3) of this section, the Secretary shall submit to the  
17 State agency a written justification for the failure of the  
18 Secretary to adopt regulations consistent with the agen-  
19 cy’s comments or petition.”.

20 **SEC. 306. MONITORING THE STATUS OF SPECIES.**

21 Section 4(b)(3) (16 U.S.C. 1533(b)(3)), as amended  
22 by sections 304(a) and 305(a) of this Act, is amended by  
23 adding after subparagraph (C) the following subpara-  
24 graph:

1           “(D) The Secretary shall implement a system  
2 to monitor effectively the status of all species with  
3 respect to which a finding is made that the peti-  
4 tioned action is warranted but precluded by propos-  
5 als to determine whether any species is an endan-  
6 gered species or a threatened species and progress is  
7 being made to add qualified species to the list pub-  
8 lished under subsection (c) and to remove from lists  
9 published under that subsection species for which  
10 protection of this Act is no longer necessary, and  
11 shall make prompt use of the authority under para-  
12 graph (7) to prevent a significant risk to the well  
13 being of any such species.”.

14 **SEC. 307. PETITIONS TO DELIST SPECIES.**

15           Section 4(b)(3) (16 U.S.C. 1533(b)(3)), as amended  
16 by sections 301(a) and (c), 303(a), 304(a), 305(a), and  
17 306 of this Act, is further amended by adding at the end  
18 the following new subparagraphs:

19           “(G) Any person may submit to the Secretary  
20 a petition to revise a previous determination by the  
21 Secretary under this Act that a species is an endan-  
22 gered species or threatened species and to remove  
23 the species from a list published under subsection  
24 (c), on the basis that—

1                   “(i) new data or a reinterpretation of prior  
2                   data indicates that the previous determination  
3                   was in error;

4                   “(ii) the species is extinct; or

5                   “(iii) the population level target established  
6                   for the species in a conservation plan under sec-  
7                   tion 5(c)(3)(C)(vii) has been achieved.

8                   “(H) Not later than 90 days after receiving a  
9                   petition under subparagraph (D) for a species, the  
10                  Secretary shall publish—

11                  “(i) a proposed regulation to revise a pre-  
12                  vious determination for the species and to re-  
13                  move the species from a list published under  
14                  subsection (c) on a basis set forth in subpara-  
15                  graph (G); or

16                  “(ii) a finding that such a basis for the ac-  
17                  tion requested by the petition does not exist.”.

18 **TITLE IV—RECOGNIZING OTHER**  
19 **FEDERAL ACTION, LAWS, AND**  
20 **MISSIONS**

21 **SEC. 401. BALANCE ESA WITH OTHER LAWS AND MISSIONS.**

22           (a) **FEDERAL AGENCY ACTIONS.**—Section 7 (16  
23 U.S.C. 1536) is amended by amending the matter preced-  
24 ing subsection (b) to read as follows:

## 1 "SEC. 7. INTERAGENCY COOPERATION.

2 "(a) FEDERAL AGENCY ACTIONS AND CONSULTA-  
3 TIONS.—

4 "(1) PROGRAMS ADMINISTERED BY THE SEC-  
5 RETARY OF THE INTERIOR.—The Secretary shall re-  
6 view other programs administered by the Secretary  
7 and utilize such programs in furtherance of the pur-  
8 poses of this Act. Except as provided in section 5(d),  
9 (e), and (i), all other Federal agencies shall, consist-  
10 ent with their primary missions and in consultation  
11 with and with the assistance of the Secretary, utilize  
12 their authorities in furtherance of the purposes of  
13 this Act by carrying out programs for the conserva-  
14 tion of endangered species and threatened species  
15 listed pursuant to section 4.

16 "(2) PROGRAMS ADMINISTERED BY OTHER  
17 AGENCIES.—Except as provided in section 5(d) and  
18 (e), each Federal agency shall ensure that any action  
19 authorized, funded, or carried out by such agency  
20 (hereinafter in this section referred to as an 'agency  
21 action') is not likely to jeopardize the continued ex-  
22 istence of any endangered species or threatened spe-  
23 cies or destroy or adversely modify any habitat that  
24 is designated by the Secretary as critical habitat of  
25 the species in a manner that is likely to jeopardize  
26 the continued existence of the species. In the case of

1 any agency action that the agency has determined is  
2 subject to this paragraph and that is likely to sig-  
3 nificantly and adversely affect an endangered species  
4 or a threatened species, the Federal agency shall ful-  
5 fill the requirements of this paragraph in consulta-  
6 tion with and with the assistance of the Secretary.  
7 As provided in section 5(d)(2), each Federal agency  
8 may initiate consultation with the Secretary to re-  
9 ceive guidance from the Secretary on the consistency  
10 of its action with the conservation objective or con-  
11 servation plan for such species developed pursuant  
12 to section 5, with an incidental take permit for such  
13 species issued pursuant to section 10(a), or with a  
14 cooperative management agreement concerning such  
15 species executed pursuant to section 6(b). In fulfill-  
16 ing the requirements of this paragraph each agency  
17 shall use the best available scientific and commercial  
18 data, shall consider expert opinion and any reason-  
19 able and prudent alternatives developed under sub-  
20 section (b)(3)(A), and shall render the decision of  
21 the agency in a manner consistent with the obliga-  
22 tions and responsibilities of the agency under each  
23 applicable law and treaty.

24 “(3) INVOLVEMENT OF APPLICANTS FOR FED-  
25 ERAL APPROVALS.—Subject to such guidelines as

1 the Secretary may establish, a Federal agency shall  
2 consult with the Secretary on any prospective agency  
3 action at the request of, with the involvement of,  
4 and in cooperation with, the prospective permit or li-  
5 cense applicant if the applicant has reason to believe  
6 that an endangered species or a threatened species  
7 may be present in the area affected by his project,  
8 that the project is inconsistent with the conservation  
9 objective or plan for such species developed pursuant  
10 to section 5, an incidental take permit for such spe-  
11 cies issued pursuant to section 10(a), or a coopera-  
12 tive management agreement for such species exe-  
13 cuted pursuant to section 6(b), and that implemen-  
14 tation of such action will likely affect such species.

15 “(4) CONFERRING ON CANDIDATE SPECIES.—

16 Each Federal agency shall confer with the Secretary  
17 on any agency action which is likely to jeopardize  
18 the continued existence of any species proposed to be  
19 listed under section 4 or to destroy or adversely  
20 modify any habitat that is proposed to be designated  
21 by the Secretary as critical habitat of such a species  
22 in a manner that is likely to jeopardize the contin-  
23 ued existence of the species. This paragraph does  
24 not require a limitation on the commitment of re-  
25 sources as described in subsection (d).

1 not require a limitation on the commitment of re-  
2 sources as described in subsection (d).

3 “(5) LIMITATIONS ON MODIFICATIONS TO LAND  
4 MANAGEMENT.—Notwithstanding any other provi-  
5 sion of this Act, the authority in this Act shall not  
6 be construed to authorize or form the basis for any  
7 Federal agency to modify a land management plan,  
8 policy, standard, or guideline or water allocation  
9 plan unless a determination has been made under  
10 section 4 that a species is threatened or endangered.  
11 Notwithstanding any other law or regulation, man-  
12 agement plans, practices, policies, projects, or guide-  
13 lines, including management plans which, as of Oc-  
14 tober 1, 1995, are subject to modification pending  
15 completion of a final environmental impact state-  
16 ment, shall not be amended for the purpose of main-  
17 taining viable populations of native and desired non-  
18 native species unless it is determined under this Act  
19 that current practices are likely to jeopardize the  
20 continued existence of the species.”.

21 (b) RESOLVING CONFLICTS BETWEEN FEDERAL  
22 AGENCIES.—Section 7(a), as amended by subsection (a)  
23 of this section and section 402 of this Act, is amended  
24 by adding at the end the following new paragraphs:



1           “(8) RELATIONSHIP TO DUTIES UNDER OTHER  
2 LAWS.—(A) The responsibilities of a Federal agency  
3 under this section shall not supersede and shall be  
4 implemented in a manner consistent with duties as-  
5 signed to the Federal agency by any other laws or  
6 by any treaties.

7           “(B)(i) If a Federal agency determines that the  
8 responsibilities and duties described in subparagraph  
9 (A) are in irreconcilable conflict, the action agency  
10 shall request the President to resolve the conflict.

11           “(ii) In determining a resolution to such a con-  
12 flict, the President shall consider and choose the  
13 course of action that best meets the public interest  
14 and, to the extent possible, balances pursuit of the  
15 conservation objective or the purposes of the con-  
16 servation plan with economic and social needs and  
17 pursuit of the purposes of the other laws or treaties.  
18 The authority assigned to the President by this sub-  
19 paragraph may not be delegated to a member of the  
20 executive branch who has not been confirmed by the  
21 Senate.

22           “(9) MODIFICATION OF PROJECTS AND FACILI-  
23 TIES.—Any consultation and conferencing required  
24 under paragraphs (2) and (4) for an agency action  
25 that consists solely of a modification of a Federal,

1 State, local government, or private project or facility  
2 shall be limited to the consideration of the effects  
3 that result from the modification that comprises the  
4 agency action.”.

5 (c) PROCEDURES FOR CONSULTATION.—Section 7(b)  
6 (16 U.S.C. 1536(b)) is amended by striking so much as  
7 precedes paragraph (3)(B) and inserting the following:

8 “(b) OPINION OF SECRETARY.—

9 “(1) PERIODS WITHIN WHICH CONSULTATION  
10 MUST BE COMPLETED.—(A) Consultation under sub-  
11 section (a)(2) with respect to any agency action shall  
12 be concluded within the 90-day period beginning on  
13 the date on which initiated by the Federal agency.  
14 The period may be extended by not more than 45  
15 days by the Secretary or head of the Federal agency  
16 by publication of notice in the Federal Register that  
17 sets forth the reasons for the extension. Consultation  
18 on an agency action involving a permit or license ap-  
19 plicant shall be concluded not later than the earlier  
20 of—

21 “(i) 1 year after the date of submission of  
22 the application to the Federal agency; or

23 “(ii) the end of the period established  
24 under subparagraph (B).

1           “(B) Subject to subparagraph (A), in the case  
2 of an agency action involving a permit or license ap-  
3 plicant, the Secretary and the Federal agency may  
4 not mutually agree to conclude consultation within a  
5 period exceeding 90 days unless the Secretary, be-  
6 fore the close of the 90th day referred to in subpara-  
7 graph (A)—

8           “(i) if the consultation period proposed to  
9 be agreed to will end before the 150th day after  
10 the date on which consultation was initiated,  
11 submits to the applicant a written statement  
12 setting forth—

13           “(I) the reasons why a longer period  
14 is required,

15           “(II) the information that is required  
16 to complete the consultation, and

17           “(III) the estimated date on which  
18 consultation will be completed; or

19           “(ii) if the consultation period proposed to  
20 be agreed to will end on or after the 150th day  
21 but before the 210th day after the date on  
22 which consultation was initiated, obtains the  
23 consent of the applicant to such period.

24           “(C) If consultation is not concluded and the  
25 written statement of the Secretary required under

1 paragraph (3)(A) is not provided to the Federal  
2 agency by the applicable deadline established under  
3 this paragraph, the requirements of subsection  
4 (a)(2) shall be deemed met and the Federal agency  
5 may proceed with the agency action.

6 “(D) A permit or license applicant shall be enti-  
7 tled to participate fully in any consultation or con-  
8 ferencing under this section with respect to any  
9 agency action required for the granting of an au-  
10 thorization or provision of funding to the applicant.

11 “(2) PROCEDURE FOR APPLICANT CONSULTA-  
12 TION.—Consultation under subsection (a)(3) shall be  
13 concluded within such period as is agreeable to the  
14 Secretary, the Federal agency, and the applicant  
15 concerned.

16 “(3) WRITTEN OPINION OF SECRETARY.—(A)(i)  
17 Promptly after conclusion of consultation under  
18 paragraph (2) or (3) of subsection (a), the Secretary  
19 shall provide to the Federal agency and the appli-  
20 cant, if any, a written statement setting forth the  
21 Secretary’s opinion, and a summary of the informa-  
22 tion on which the opinion is based, detailing whether  
23 the agency action is consistent with the conservation  
24 objective or plan developed pursuant to section 5, an  
25 incidental taking permit issued pursuant to section

1 10(a), or a cooperative management agreement exe-  
2 cuted pursuant to section 6(b). If the Secretary de-  
3 termines that the action is likely to jeopardize the  
4 continued existence of the species as described in  
5 subsection (a), the Secretary shall suggest reason-  
6 able and prudent alternatives (considering any rea-  
7 sonable and prudent alternatives undertaken by  
8 other Federal agencies) that are consistent with sub-  
9 section (a)(2) and that impose the least social and  
10 economic costs.

11 “(ii) Unless required by law other than sub-  
12 sections (a) through (d), the Secretary, in any opin-  
13 ion or statement concerning an agency action made  
14 under this subsection (including any reasonable and  
15 prudent alternative suggested under clause (i) or  
16 any reasonable and prudent measure specified under  
17 clause (ii) of paragraph (4)), and the head of the  
18 Federal agency proposing the agency action, may  
19 not require, provide for, or recommend the imposi-  
20 tion of any restriction or obligation on the activity  
21 of any person that is not authorized, funded, carried  
22 out, or otherwise subject to regulation by the Fed-  
23 eral agency. Nothing in this clause prevents the Sec-  
24 retary from pursuing any appropriate remedy under

1 section 11 for any activity prohibited by section 4(d)  
2 or 9.

3 “(iii) The Secretary shall not require a reason-  
4 able and prudent alternative that may or will result  
5 in a significant adverse impact upon waterfowl popu-  
6 lations, waterfowl habitat management, or waterfowl  
7 hunting opportunities in a significant waterfowl  
8 breeding, staging, or wintering habitat area. In this  
9 clause, the term ‘significant adverse impact’ means  
10 any actions, proposed or in effect, which individually  
11 or cumulatively are likely to reduce the carrying ca-  
12 pacity of habitat for waterfowl by 10 percent or  
13 more of its current capability, as determined on a  
14 local, regional, statewide or national basis. In this  
15 clause, the term ‘significant waterfowl breeding,  
16 staging, or wintering habitat areas’ means those pri-  
17 vate or public lands managed primarily for, or pro-  
18 viding, waterfowl breeding, staging or wintering  
19 habitat including seasonal/permanent marsh lands or  
20 land under rice cultivation for three out of the past  
21 five years.

22 “(iv) Notwithstanding any other provision of  
23 law, if the Secretary renders an opinion or suggests  
24 any reasonable and prudent alternative which has  
25 general application to a group of individuals con-

1       ducting a commercial operation, the Secretary may  
2       not promulgate an emergency rule without providing  
3       at least 30 days for public comment on the emer-  
4       gency rule.

5       (d) ACTIVITIES PRIOR TO COMPLETION OF CON-  
6       SULTATION.—Section 7(d) (16 U.S.C. 1536(d)) is amend-  
7       ed to read as follows:

8       “(d) LIMITATION ON COMMITMENT OF RE-  
9       SOURCES.—

10       “(1) IN GENERAL.—Except as provided in para-  
11       graph (2), after initiation of consultation required  
12       under subsection (a)(2), the Federal agency and the  
13       permit or license applicant shall not make any irre-  
14       versible or irretrievable commitment of resources  
15       with respect to the agency action which has the ef-  
16       fect of foreclosing the formulation or implementation  
17       of any reasonable and prudent alternative measures  
18       which would not violate subsection (a)(2).

19       “(2) RELATIONSHIP TO LAND MANAGEMENT  
20       PLANNING REQUIREMENTS.—If the listing of a spe-  
21       cies, or other procedure or decision related to a spe-  
22       cies listed under section 4(e)(1), requires consulta-  
23       tion under subsection (a)(2) on a land use plan or  
24       land or resource management plan (or an amend-  
25       ment to or revision of the plan) prepared under sec-

1       tion 202 of the Federal Land Policy and Manage-  
2       ment Act of 1976 (43 U.S.C. 1712) or section 6 of  
3       the Forest and Rangeland Renewable Resources  
4       Planning Act of 1974 (16 U.S.C. 1604), the land  
5       management agency implementing the plan may au-  
6       thorize, fund, or carry out an agency action that is  
7       consistent with the plan prior to the completion of  
8       the consultation, if, under the procedures established  
9       by this section, the head of the land management  
10      agency responsible for the action determines or has  
11      determined that the action—

12               “(A) is not likely to significantly and ad-  
13      versely affect the species; or

14               “(B) is likely to significantly and adversely  
15      affect the species, and the Secretary issues an  
16      opinion on the action that finds that the ac-  
17      tion—

18               “(i) is not likely to jeopardize the con-  
19      tinued existence of the species; or

20               “(ii) is likely to jeopardize the contin-  
21      ued existence of the species, and the agen-  
22      cy agrees to a reasonable and prudent al-  
23      ternative.”.

24      (e) DEFINITIONS.—Section 3 (16 U.S.C. 1532) is  
25      amended—



1           (1) by adding after paragraph (15) (as added  
2 by section 204(a) of this Act) the following new  
3 paragraph:

4           “(16) The term ‘likely to jeopardize the contin-  
5 ued existence of’, with respect to an action or activ-  
6 ity affecting an endangered species or a threatened  
7 species, means an action or activity that significantly  
8 diminishes the likelihood of the survival of the spe-  
9 cies by significantly reducing the numbers or dis-  
10 tribution of the entire species.”;

11           (2) by amending paragraph (18) (as redesign-  
12 ated by section 102(a)(1) of this Act) to read as  
13 follows:

14           “(18) The term ‘permit or license applicant’  
15 means, with respect to the consultation procedures  
16 established by section 7, any person that requires  
17 authorization or funding from a Federal agency as  
18 a prerequisite to conducting an activity (including a  
19 party to a written lease, right-of-way, license, con-  
20 tract to purchase or provide a product or service, or  
21 other permit with a Federal agency) that requires an  
22 action from the agency to obtain the benefit of the  
23 activity.”; and

1           (3) by adding after paragraph (20) (as redesignated by section 102(a)(1) of this Act) the following  
2           new paragraph:  
3

4           “(21) The term ‘reasonable and prudent alternative’ means an alternative action under section  
5           7(b)(3) during consultation on an agency action  
6           that—  
7

8                   “(A) can be implemented in a manner consistent with the intended purpose of the agency  
9                   action or the activity of a non-Federal person  
10                   under section 10;  
11

12                   “(B) can be implemented consistent with  
13                   the scope of the legal authority and jurisdiction  
14                   of the Federal agency;

15                   “(C) is economically and technologically  
16                   feasible for the applicant or non-Federal person  
17                   to undertake; and

18                   “(D) the Secretary believes would avoid  
19                   being likely to jeopardize the continued existence of the species.”.  
20

21 **SEC. 402. EXEMPTIONS FROM CONSULTATION AND CON-**  
22 **FERENCING.**

23           Section 7(a), as amended by section 401(a) of this  
24 Act, is amended by adding at the end the following new  
25 paragraphs:

1           “(6) ACTIONS EXEMPT FROM CONSULTATION  
2           AND CONFERENCING.—Consultation and conferenc-  
3           ing under paragraphs (2) and (4) shall not be re-  
4           quired for any agency action that—

5                   “(A) is consistent with the provisions of a  
6                   final conservation plan under section 5(c)(5) or  
7                   a conservation objective described in section  
8                   5(b)(3);

9                   “(B) is consistent with a cooperative man-  
10                  agement agreement or an incidental taking per-  
11                  mit;

12                  “(C) addresses a critical, imminent threat  
13                  to public health or safety or a catastrophic nat-  
14                  ural event or compliance with Federal, State, or  
15                  local safety or public health requirements;

16                  “(D) consists of routine operation, mainte-  
17                  nance, rehabilitation, repair, or replacement to  
18                  a Federal or non-Federal project or facility, in-  
19                  cluding operation of a project or facility in ac-  
20                  cordance with a previously issued Federal li-  
21                  cense, permit, or other authorization; or

22                  “(E) permits activities that occur on pri-  
23                  vate land.

24           “(7) ACTIONS NOT PROHIBITED.—An agency  
25           action shall not constitute a taking of a species pro-

1       hibited by this Act or any regulation issued under  
2       this Act if the action is consistent with—

3               “(A) the actions provided for in a final  
4       conservation plan under section 5(c)(5) or a  
5       conservation objective described in section  
6       5(b)(3); or

7               “(B) a cooperative management agreement  
8       or an incidental take permit.”.

9       **SEC. 403. ELIMINATING THE EXEMPTION COMMITTEE (GOD**  
10       **COMMITTEE).**

11       (a) **CONFORMING AMENDMENTS.**—Section 7(c) (16  
12       U.S.C. 1536(c)) is amended—

13               (1) in the first full sentence by striking “(1) To  
14       facilitate” and inserting “To facilitate”; and

15               (2) by striking paragraph (2).

16       (b) **PRESIDENTIAL EXEMPTIONS.**—Section 7(e) (16  
17       U.S.C. 1536(e)) is amended to read as follows:

18               “(e) **EXEMPTIONS.**—Notwithstanding any other pro-  
19       vision of this Act—

20               “(1) the Secretary shall grant an exemption  
21       from this Act for any activity if the Secretary of De-  
22       fense determines that the exemption of the activity  
23       is necessary for reasons of national security; and

24               “(2) the President may grant an exemption  
25       from this Act for any area that the President has

1 declared to be a major disaster area under The Rob-  
2 ert T. Stafford Disaster Relief and Emergency As-  
3 sistance Act (42 U.S.C. 5121 et seq.) for any project  
4 for the repair or replacement of a public facility sub-  
5 stantially as the facility existed prior to the disaster  
6 under section 405 or 406 of that Act (42 U.S.C.  
7 5171 and 5172), if the President determines that  
8 the project—

9 “(A) is necessary to prevent the recurrence  
10 of such a natural disaster and to reduce the po-  
11 tential loss of human life; and

12 “(B) involves an emergency situation that  
13 does not allow the procedures of this Act (other  
14 than this subsection) to apply.”.

15 (c) REPEAL.—Subsections (f) through (p) of section  
16 7 (16 U.S.C. 1536(f)–(p)) are repealed.

## 17 **TITLE V—BETTER MANAGEMENT** 18 **AND CONSERVATION OF LIST-** 19 **ED SPECIES**

### 20 **SEC. 501. SETTING CONSERVATION OBJECTIVES.**

21 Section 5 (16 U.S.C. 1534) is redesignated as section  
22 5A, and the following new section is added after section  
23 4:

1 **"SEC. 5. SPECIES CONSERVATION PLANS.**

2       “(a) IN GENERAL.—Except as provided in subsection  
3 (b)(3)(C), the Secretary shall publish a conservation objec-  
4 tive and a conservation plan for each species determined  
5 to be an endangered species or a threatened species pursu-  
6 ant to section 4.

7       “(b) DEVELOPMENT OF CONSERVATION OBJEC-  
8 TIVE.—

9               “(1) ASSESSMENT AND PLANNING TEAM.—Not  
10 later than 30 days after the listing determination,  
11 the Secretary shall appoint an assessment and plan-  
12 ning team which shall not be subject to the Federal  
13 Advisory Committee Act (5 U.S.C. App.) and shall  
14 consist of—

15                       “(A) experts in biology or pertinent sci-  
16 entific fields, economics, property law and regu-  
17 lation, and other appropriate disciplines from  
18 the Department of the Secretary, other Federal  
19 agencies, and the private sector;

20                       “(B) a representative nominated by the  
21 Governor of each affected State;

22                       “(C) representatives nominated by each af-  
23 fected local government, if the local government  
24 agrees to the appointment of a representative;  
25 and

1                   “(D) representatives of persons who may  
2                   be directly, economically impacted by the con-  
3                   servation plan.

4                   “(2) ASSESSMENTS.—Not later than 180 days  
5                   after the listing determination, the assessment and  
6                   planning team shall report to the Secretary the as-  
7                   sessment of the following biological, economic, and  
8                   intergovernmental factors with respect to the listed  
9                   species:

10                   “(A) The team shall assess—

11                   “(i) the biological considerations nec-  
12                   essary to carry out this Act;

13                   “(ii) the biological significance of the  
14                   species;

15                   “(iii) the geographic range and occu-  
16                   pied habitat of the species, and the type  
17                   and amounts of habitat needed, at a mini-  
18                   mum, to maintain the existence of the spe-  
19                   cies and, at a maximum, to secure recovery  
20                   of the species;

21                   “(iv) the current population, and the  
22                   population trend, of the species;

23                   “(v) the technical practicality of re-  
24                   covering the species;

1                   “(vi) the potential management meas-  
2                   ures capable of recovering, or reducing the  
3                   risks to survival of, the species, including  
4                   the contribution of existing or potential  
5                   captive breeding programs for the species,  
6                   predator control, enhancement of food  
7                   sources, supplemental feeding, and other  
8                   methods which enhance the survival of the  
9                   young of the species; and

10                   “(vii) where appropriate, the demon-  
11                   strable commercial or medicinal value of  
12                   the species.

13                   “(B) The team shall assess the direct, indi-  
14                   rect, and cumulative economic and social im-  
15                   pacts on the public and private sectors, includ-  
16                   ing local governments, that may result from the  
17                   listing determination and any potential manage-  
18                   ment measures identified under subparagraph  
19                   (A)(vi), including impacts on the cost of govern-  
20                   mental actions, tax and other revenues, employ-  
21                   ment, the use and value of property, other so-  
22                   cial, cultural, and community values, and an as-  
23                   sessment of any commercial activity which  
24                   could potentially result in a net benefit to the  
25                   conservation of the species.



1           “(C) The team shall assess the impacts on  
2           State and local land use laws, conservation  
3           measures, and water allocation policies that  
4           may result from the listing determination and  
5           from the potential management measures iden-  
6           tified under subparagraph (A)(vi).

7           “(3) SECRETARIAL REVIEW OF ASSESSMENTS  
8           AND ESTABLISHMENT OF CONSERVATION OBJEC-  
9           TIVE.—(A) Not later than 210 days after a listing  
10          determination, the Secretary shall review the report  
11          of the assessment and planning team prepared pur-  
12          suant to paragraph (2), establish a conservation ob-  
13          jective for the species, and publish in the Federal  
14          Register the conservation objective, along with a  
15          statement of findings on which the conservation ob-  
16          jective was established.

17          “(B) The conservation objective may be, in the  
18          discretion of the Secretary—

19                 “(i) recovery of the listed species;

20                 “(ii) such level of conservation of the spe-  
21                 cies which the Secretary determines practicable  
22                 and reasonable to the extent that the benefits  
23                 of the potential conservation measures outweigh  
24                 the economic and social costs of such measures,

1 including but not limited to maintenance of ex-  
2 isting population levels;

3 “(iii) no Federal action other than enforce-  
4 ment against any person whose activity violates  
5 the prohibitions specified in section 9(a), in-  
6 cluding any activity that results in a taking of  
7 the species, unless the taking is incidental to,  
8 and not the purpose of, the carrying out of an  
9 otherwise lawful activity; or

10 “(iv) such other objective as the Secretary  
11 may determine that does not provide a lesser  
12 level of protection than the level described in  
13 clause (iii).

14 “(C) If the conservation objective established by  
15 the Secretary is the objective provided in subpara-  
16 graph (B)(iii), the Secretary shall not develop a con-  
17 servation plan for the affected species under sub-  
18 section (c).”.

19 **SEC. 502. PREPARING A CONSERVATION PLAN.**

20 (a) **IN GENERAL.**—Section 5 (16 U.S.C. 1534), as  
21 added by section 501 of this Act, is amended by adding  
22 at the end the following new subsections:

23 “(c) **DEVELOPMENT OF CONSERVATION PLAN.**—

1           “(1) PRIORITIES.—In the development and im-  
2           plementation of a conservation plan under this sub-  
3           section, the Secretary shall accord priority to—

4           “(A) the development of an integrated plan  
5           for 2 or more endangered species or threatened  
6           species that are likely to benefit from an inte-  
7           grated conservation plan;

8           “(B) the geographic areas where conflicts  
9           between the conservation of the affected species  
10          and development projects or other forms of eco-  
11          nomic activity exist or are likely to exist;

12          “(C) protection of the listed species on  
13          units of the National Biological Diversity Re-  
14          serve as provided in section 5A(a);

15          “(D) the implementation of conservation  
16          measures that have the least economic and so-  
17          cial costs;

18          “(E) nonregulatory, incentive-based con-  
19          servation measures and commercial activities  
20          that provide a net benefit to the conservation of  
21          the species; and

22          “(F) plans in which States or private orga-  
23          nizations or persons are the primary  
24          implementors.

1           “(2) PUBLICATION OF DRAFT PLAN.—Not later  
2           than 12 months after the date of a determination  
3           that a species is an endangered species or a threat-  
4           ened species, the assessment and planning team for  
5           the species shall publish a draft conservation plan  
6           for the species which is based on the assessments  
7           made pursuant to subsection (b)(2) and designed to  
8           achieve the conservation objective established pursu-  
9           ant to subsection (b)(3).

10           “(3) CONTENTS OF DRAFT PLAN.—Each draft  
11           conservation plan shall contain—

12                   “(A) recommendations for Federal agency  
13                   compliance with section 7(a)(1) and 7(a)(2);

14                   “(B) recommendations for avoiding a tak-  
15                   ing of a listed species prohibited under section  
16                   9(a)(1) and a list of specific activities that  
17                   would constitute a take under section 9;

18                   “(C) alternative strategies to achieve the  
19                   conservation objective for the listed species  
20                   which range from a strategy requiring the least  
21                   possible Federal management to achieve the  
22                   conservation objective to a strategy involving  
23                   more intensive Federal management to achieve  
24                   the objective, each of which contains—

1           “(i) an estimate of the risks to the  
2 survival and recovery of the species that  
3 the alternative would entail;

4           “(ii) a description of any site-specific  
5 management measures recommended for  
6 the alternative;

7           “(iii) an analysis of the relationship of  
8 any habitat of the species proposed for  
9 designation as critical habitat to the rec-  
10 ommended management measures;

11           “(iv) a description of the direct, indi-  
12 rect, and cumulative economic and social  
13 impacts on the public and private sectors  
14 including impacts on employment, the cost  
15 of government actions, tax and other reve-  
16 nues, the use and value of property, and  
17 other social, cultural, and community val-  
18 ues;

19           “(v) a description of any captive  
20 breeding program recommended for the al-  
21 ternative;

22           “(vi) an analysis of whether the alter-  
23 native would include any release of an ex-  
24 perimental population outside the current  
25 range of the species and an identification

1 of candidate geographic areas for the re-  
2 lease;

3 “(vii) objective and measurable cri-  
4 teria, including a population level target,  
5 that, if met, would result in a determina-  
6 tion under section 4 that the species is no  
7 longer an endangered species or threatened  
8 species;

9 “(viii) estimates of the time and costs  
10 required to carry out the management  
11 measures, including any intermediate  
12 steps; and

13 “(ix) a description of the role of each  
14 affected State, if any, in achieving the con-  
15 servation objective.

16 “(4) PLAN PREPARATION PROCEDURES.—(A)  
17 The Secretary shall consult with the Governor of  
18 each State in which the affected species is located  
19 during the preparation of each draft and final con-  
20 servation plan. Each plan shall provide for equitable  
21 treatment of affected States and other non-Federal  
22 persons.

23 “(B) The Secretary shall publish in the Federal  
24 Register and a newspaper of general circulation in  
25 each affected county and parish a notice of the avail-

1 ability and a summary of, and a request for the sub-  
2 mission of comments on, each draft conservation  
3 plan.

4 “(C) The Secretary shall hold at least 1 hearing  
5 on each draft conservation plan in each State to  
6 which the plan would apply in a location that is as  
7 close as possible to the center of the habitat of the  
8 affected species in such State.

9 “(D) Prior to any decision to adopt a final con-  
10 servation plan, the Secretary shall consider and  
11 weigh carefully all information presented during  
12 each hearing held under subparagraph (C) or re-  
13 ceived in response to a request for comments pub-  
14 lished under subparagraph (B).

15 “(5) PUBLICATION OF FINAL PLAN.—Not later  
16 than 18 months from the date of a determination  
17 that a species is an endangered species or a threat-  
18 ened species, the Secretary shall publish in the Fed-  
19 eral Register a notice of the availability, and a sum-  
20 mary, of a final conservation plan for the species.  
21 The notice shall include a detailed description of—

22 “(A) the reasons for the selection of the  
23 final conservation plan;

24 “(B) the reasons for not selecting each of  
25 the other alternatives included in the draft con-

1            servation plan, including, if any alternative is  
2            selected other than the alternative that would  
3            impose the least total costs on the public and  
4            private sectors, the reasons for such selection;

5                    “(C) the effect of the priorities specified in  
6            paragraph (1) on the selection; and

7                    “(D) the response of the Secretary to the  
8            information referred to in paragraph (4).

9            “(6) PARTICIPATION BY OTHER PERSONS.—In  
10           developing and implementing conservation plans, the  
11           Secretary may use the services of appropriate public  
12           and private agencies and institutions and other  
13           qualified persons.

14                   “(7) PLAN REVISION OR AMENDMENT.—Any re-  
15           vision of or amendment to a conservation plan shall  
16           be made in accordance with the procedures and re-  
17           quirements of subsection (b) and this subsection, ex-  
18           cept that the Secretary by regulation may provide  
19           for other procedures and requirements for any  
20           amendment that does not increase the direct or indi-  
21           rect cost of implementation of the plan or enlarge  
22           the area to which the plan applies.

23                   “(d) NO FURTHER PROCEDURES OR REQUIREMENTS  
24           FOR ACTIONS CONSISTENT WITH THE CONSERVATION  
25           PLAN.—If a conservation plan is prepared under sub-



1 section (c) or if a conservation objective is established  
2 under subsection (b)(3)(C)—

3           “(1) any Federal agency that determines that  
4 the actions of the agency are consistent with the  
5 provisions of the conservation plan or conservation  
6 objective shall be considered to comply with section  
7 7(a)(1) for the affected species;

8           “(2) any agency action that the Federal agency  
9 determines is consistent with the provisions of the  
10 conservation plan or conservation objective shall not  
11 be subject to section 7(a)(2) for the affected species,  
12 except that a Federal agency may initiate consulta-  
13 tion under section 7(a)(2) if the agency desires guid-  
14 ance from the Secretary on the consistency of the  
15 action of the agency with the conservation plan or  
16 conservation objective; and

17           “(3) any action of any person that is consistent  
18 with the provisions of the conservation plan or con-  
19 servation objective shall not constitute a violation  
20 concerning the affected species of any applicable  
21 prohibition under section 9(a), except that a non-  
22 Federal person may initiate consultation under sec-  
23 tion 10(a)(2)—

1           “(A) if the person desires guidance from  
2           the Secretary on the consistency of the action  
3           with the plan or objective; or

4           “(B) in order to determine whether to  
5           apply for a permit under section 10 for any ac-  
6           tion that is inconsistent with the plan or objec-  
7           tive.”.

8           (b) CONSERVATION OBJECTIVE AND CONSERVATION  
9           RULE DEFINED.—Section 3(4) (16 U.S.C. 1532), as re-  
10          designated by section 102(a) of this Act, is amended to  
11          read as follows:

12           “(4) The terms ‘conservation objective’ and  
13          ‘conservation plan’ (except when modified by ‘non-  
14          Federal’) mean a conservation objective and a con-  
15          servation plan, respectively, developed under section  
16          5.”.

17          **SEC. 503. INTERIM MEASURES.**

18          Section 5 (16 U.S.C. 1534), as added by section 501  
19          of this Act and as amended by section 502 of this Act,  
20          is amended by adding at the end the following new sub-  
21          sections:

22           “(e) **MANAGEMENT PRIOR TO PUBLICATION OF CON-**  
23          **SERVATION PLAN.**—

24           “(1) **IN GENERAL.**—After a listing determina-  
25          tion and before the publication of a final conserva-

1 tion plan, or, if no plan is required pursuant to sub-  
2 section (b)(3)(C), a conservation objective, for the  
3 species—

4 “(A) the prohibitions of section 9(a) shall  
5 apply to any person, except in the case of a tak-  
6 ing of a member of the species that is incidental  
7 to, and not the purpose of, the carrying out of  
8 an otherwise lawful activity which incidental  
9 taking activity may include but is not limited to  
10 the routine operation, maintenance, rehabilita-  
11 tion, replacement, or repair of any structure,  
12 building, road, dam, airport, or any irrigation  
13 or other facility which is in operation prior to  
14 the publication of the determination under sec-  
15 tion 4(b)(6); and

16 “(B) no Federal agency shall be required  
17 to comply with section 7(a)(1) and no consulta-  
18 tion shall be required on any agency action  
19 under section 7(a)(2).

20 “(2) EMERGENCY RULEMAKING PROTEC-  
21 TIONS.—Notwithstanding paragraph (1), sections  
22 7(a) and 9(a) shall apply fully to the listed species  
23 during a period in which an emergency rulemaking  
24 is in effect pursuant to section 4(b)(7) or if the  
25 President declares, and advises the Secretary, that

1       there exists an imminent threat to the existence of  
2       the species. Such declaration of the President ex-  
3       pires upon the deadline for publication of a final  
4       conservation plan for the species pursuant to sub-  
5       section (c)(5) or the publication of a conservation  
6       objective for the species provided in subsection  
7       (b)(3) or if no conservation plan is required pursu-  
8       ant to subsection (b)(3)(C).

9       “(f) SUSPENSION OF CONSERVATION PLAN OR OB-  
10       JECTIVE.—If the Secretary issues an incidental take per-  
11       mit or enters into a cooperative management agreement  
12       under section 6, the Secretary, by publication of notice  
13       in the Federal Register, shall suspend the conservation ob-  
14       jective or conservation plan with respect to the geographic  
15       area or action applicable to the species to which the permit  
16       or agreement applies.

17       “(g) NONDELEGATION OF DUTIES.—The Secretary  
18       may not delegate the authority to make the final decision  
19       to select a conservation objective, issue a conservation  
20       plan, or designate critical habitat under this section.

21       “(h) REVIEW OF CONSERVATION PLANS.—

22               “(1) DEADLINES.—The Secretary shall review  
23       each conservation plan and the conservation objec-  
24       tive on which it is based before the end of the 5-year  
25       period that begins on the date of publication of the

1 conservation plan, and before the end of each 5-  
2 year period thereafter.

3 “(2) REVISIONS.—The Secretary shall revise a  
4 conservation plan or the conservation objective on  
5 which it is based if the Secretary determines—

6 “(A) through a 5-year review under para-  
7 graph (1), that the conservation plan or con-  
8 servation objective does not meet the require-  
9 ments of this section; or

10 “(B) at any time—

11 “(i) that funding is not available for  
12 the implementation of a specific conserva-  
13 tion measure that is integral to the con-  
14 servation plan or that a more cost-effective  
15 alternative exists for a specific conserva-  
16 tion measure that is integral to the con-  
17 servation plan; or

18 “(ii) on the basis of scientific or com-  
19 mercial data that were not available during  
20 the development of the conservation objec-  
21 tive or conservation plan, that the con-  
22 servation objective is not achievable or the  
23 conservation plan will not achieve the con-  
24 servation objective.

1           “(3) NO REOPENING OF CONSULTATIONS.—  
2       Section 7 consultations shall not be reopened as a  
3       result of modifications to a conservation plan under  
4       paragraph (2).”.

5 **SEC. 504. CRITICAL HABITAT FOR SPECIES.**

6       (a) **CRITICAL HABITAT DESIGNATION.**—Section 5, as  
7       added by section 501 of this Act and as amended by sec-  
8       tions 502 and 503 of this Act, is amended by adding at  
9       the end the following new subsections:

10       “(i) **CRITICAL HABITAT DESIGNATION.**—

11           “(1) **DESIGNATION.**—The Secretary may, by  
12       regulation and to the extent prudent and determina-  
13       ble—

14           “(A) designate critical habitat of a species  
15       determined to be an endangered species or  
16       threatened species that meets the requirements  
17       of paragraph (3) utilizing the National  
18       Biodiversity Reserve established under section  
19       5A(a) as a first priority; and

20           “(B) revise a critical habitat designation  
21       on determining that the critical habitat does  
22       not meet the requirements of paragraph (3).

23       Designation of critical habitat shall not result in re-  
24       opening or reinitiation of consultations on Federal  
25       actions pursuant to section 7.

1           “(2) DEADLINES FOR DESIGNATION.—Any pro-  
2       posed regulation and any final regulation to des-  
3       ignate critical habitat shall be published not later  
4       than 12 months and 18 months, respectively, after  
5       the date on which the affected species is determined  
6       to be an endangered species or a threatened species.

7           “(3) BASIS FOR DESIGNATION.—The designa-  
8       tion of critical habitat, and any revision of the des-  
9       ignation, shall be made on the basis of the best  
10      available scientific and commercial data after taking  
11      into consideration the economic impact, and any  
12      other relevant impact, of designating any particular  
13      area as critical habitat and of the determination that  
14      the affected species is an endangered species or  
15      threatened species. The Secretary shall exclude any  
16      area from critical habitat—

17           “(A) which does not meet the definition of  
18      critical habitat set forth in section 3(7);

19           “(B) which is not necessary to achieve the  
20      conservation objective for the affected species  
21      established pursuant to subsection (b);

22           “(C) for which the Secretary determines  
23      that the benefits of the exclusion of the area  
24      from designation as critical habitat outweigh  
25      the benefits of designation, unless the Secretary

1 determines, on the basis of the best available  
2 scientific and commercial data, that the failure  
3 to designate the area as critical habitat will re-  
4 sult in the extinction of the affected species; or

5 “(D) in the case of property owned by a  
6 non-Federal person, where the owner thereof  
7 has not given written consent to the designation  
8 or has not been compensated as provided in sec-  
9 tion 19.

10 “(4) PROCEDURE FOR DESIGNATION.—In the  
11 Federal Register notice containing the proposed reg-  
12 ulation to designate critical habitat, the Secretary  
13 shall describe the economic impacts and other rel-  
14 evant impacts that are to be considered, and the  
15 benefits that are to be weighed, under paragraph (3)  
16 in designating an area as critical habitat, along with  
17 maps showing the location of the area to be des-  
18 igned as critical habitat. The Secretary shall sub-  
19 mit the description, and the documentation support-  
20 ing the description, to the Bureau of Labor Statis-  
21 tics of the Department of Labor. The Commissioner  
22 of Labor Statistics shall submit written comments  
23 during the comment period on the proposed regula-  
24 tion. The Secretary shall hold at least one public  
25 hearing in each State on the proposed rule in which



1 critical habitat is designated for a species. In issuing  
2 any final regulation designating critical habitat, the  
3 Secretary shall respond separately and fully to each  
4 comment.

5 “(5) JUDICIAL REVIEW OF CRITICAL HABITAT  
6 DESIGNATION.—The decision whether to designate  
7 critical habitat shall be subject to a de novo judicial  
8 review with the court determining whether the deci-  
9 sion is supported by a preponderance of the evi-  
10 dence.

11 “(j) JUDICIAL REVIEW OF CONSERVATION OBJEC-  
12 TIVE OR PLAN.—The standard for judicial review of any  
13 decision of the Secretary, or a Federal agency pursuant  
14 to this section shall be whether the decision is arbitrary,  
15 capricious, an abuse of discretion, or otherwise not in ac-  
16 cordance with law.

17 “(k) CONSERVATION PLANS FOR FOREIGN SPE-  
18 CIES.—In developing conservation objectives and con-  
19 vation plans under this section, the Secretary shall, in  
20 regard to foreign species—

21 “(1) act consistently with the Convention; and

22 “(2) cooperate and support the conservation  
23 strategy adopted for that species by any foreign na-  
24 tion in which the species occurs.”

1 (b) CONFORMING AMENDMENTS.—Section 4(b)(6)  
2 (16 U.S.C. 1533(b)(6)) is amended—

3 (1) in subparagraph (B)(i) by striking “or revi-  
4 sion concerned”;

5 (2) in subparagraph (B)(iii) by striking “or re-  
6 vision concerned, a finding that the revision should  
7 not be made,”; and

8 (3) by striking subparagraph (C).

9 (c) CONFORMING AMENDMENT.—Section 4(b)(8) (16  
10 U.S.C. 1533(b)(8)) is amended by striking “regulation”  
11 the third time it appears and all that follows through the  
12 end of the paragraph and inserting “regulation.”.

13 (d) DEFINITION OF CRITICAL HABITAT.—Section  
14 3(7), as redesignated by section 102(a) of this Act, is  
15 amended to read as follows:

16 “(7)(A) The term ‘critical habitat’ for an en-  
17 dangered species or a threatened species means the  
18 specific areas which are within the geographic area  
19 found to be occupied by a species at the time the  
20 species is determined to be an endangered species or  
21 a threatened species in accordance with section 4  
22 and which contain such physical or biological fea-  
23 tures as—

24 “(i) are essential to the persistence of the  
25 species over the 50-year period beginning on the

1 date the regulation designating the critical  
2 habitat, or any revision of the regulation, is  
3 promulgated; and

4 “(ii) require special management consider-  
5 ations or protection.

6 “(B) Except in those circumstances determined  
7 by the Secretary, critical habitat shall not include  
8 the entire geographical area occupied by the threat-  
9 ened species or endangered species.”.

10 **SEC. 505. RECOGNITION OF CAPTIVE PROPAGATION AS**  
11 **MEANS OF RECOVERY.**

12 Section 5, as added by section 501 of this Act and  
13 as amended by sections 502, 503, and 504 of this Act,  
14 is amended by adding at the end the following new sub-  
15 section:

16 “(1) **RECOGNITION OF CAPTIVE PROPAGATION AS**  
17 **MEANS OF CONSERVATION.—**

18 “(1) **IN GENERAL.—**In carrying out this Act,  
19 the Secretary shall recognize to the maximum extent  
20 practicable, and may utilize, captive propagation as  
21 a means of protecting or conserving an endangered  
22 species or a threatened species.

23 “(2) **CAPTIVE PROPAGATION GRANTS.—**The  
24 Secretary may, subject to appropriations therefor,  
25 provide annual grants to non-Federal persons to

1 fund captive propagation programs for the purpose  
2 of protecting or conserving any species that is deter-  
3 mined under section 4 to be an endangered species  
4 or a threatened species, if the Secretary determines  
5 that such a program contributes to enhancement of  
6 the population of the species.”.

7 **SEC. 506. INTRODUCTION OF SPECIES.**

8 Section 10(j) (16 U.S.C. 1539(j)) is amended—

9 (1) by amending paragraph (2)(B) to read as  
10 follows:

11 “(B) Before authorizing the release of any  
12 population under subparagraph (A), the Sec-  
13 retary shall by regulation identify the popu-  
14 lation and the precise boundaries of the geo-  
15 graphic area for the release and determine, on  
16 the basis of the best available information,  
17 whether the release is in the public interest,  
18 whether or not such population is essential to  
19 the continued existence of an endangered spe-  
20 cies or a threatened species.”;

21 (2) in paragraph (2)(C)—

22 (A) in clause (i) by striking “and” after  
23 the semicolon; and

24 (B) by striking clause (ii) and inserting the  
25 following:

1                   “(ii) for the purposes of sections 4(d)  
2                   and 9(a)(1)(B), any member of an experi-  
3                   mental population found outside the geo-  
4                   graphic area in which the population is re-  
5                   leased shall not be treated as a threatened  
6                   species if the member poses a threat to the  
7                   welfare of the public; and

8                   “(iii) critical habitat shall not be des-  
9                   ignated under this Act for any experi-  
10                  mental population determined under sub-  
11                  paragraph (B) to be not essential to the  
12                  continued existence of a species.”;

13                  (3) by redesignating paragraph (3) as para-  
14                  graph (4); and

15                  (4) by inserting after paragraph (2) the follow-  
16                  ing new paragraph:

17                  “(3) REQUIREMENTS FOR RELEASES.—In au-  
18                  thorizing the release of a population under para-  
19                  graph (2), the Secretary shall require that—

20                  “(A) to the maximum extent practicable,  
21                  the release occurs only in a unit of the National  
22                  Park System or the National Wildlife Refuge  
23                  System;

24                  “(B) a release outside a unit occurs only in  
25                  an area that has been identified as a candidate

1 site for release of the population in a conserva-  
2 tion plan for the species;

3 “(C) in the case of a release outside a unit,  
4 measures to protect the safety and welfare of  
5 the public and domestic animals and the fund-  
6 ing for the measures are identified in the regu-  
7 lations authorizing the release and are imple-  
8 mented;

9 “(D) the regulations authorizing the re-  
10 lease identify precisely the geographic area for  
11 the release;

12 “(E) a release on non-Federal land occurs  
13 only with the written consent of the owner of  
14 the land; and

15 “(F) the regulations authorizing the re-  
16 lease include measurable reintroduction goals to  
17 restore viable populations only within the spe-  
18 cific geographic area identified for release in  
19 the regulations.”.

20 **SEC. 507. CONSERVING THREATENED SPECIES.**

21 (a) REGULATIONS.—Section 4(d) (16 U.S.C.  
22 1533(d)) is amended to read as follows:

23 “(d) REGULATIONS TO PROTECT THREATENED SPE-  
24 CIES.—Whenever any species is listed as a threatened spe-  
25 cies pursuant to subsection (c), the Secretary shall issue,

1 concurrently with the regulation that provides for the list-  
2 ing of the species, such regulations as the Secretary deems  
3 necessary and advisable to provide for the conservation of  
4 such species. Such regulations may apply to the threat-  
5 ened species one or more of the prohibitions under section  
6 9(a)(1), in the case of fish and wildlife, or section 9(a)(2)  
7 in the case of plants, with respect to endangered species.  
8 The prohibition applied to the threatened species shall ad-  
9 dress the specific circumstances of such species and may  
10 not be as restrictive as such prohibition for endangered  
11 species. With respect to the taking of resident species of  
12 fish or wildlife, such regulations shall apply in any State  
13 which has entered into a cooperative agreement pursuant  
14 to section 6(c) only to the extent that such regulations  
15 have also been adopted by such State.”.

16 (b) CONFORMING AMENDMENTS.—Section 4 (16  
17 U.S.C. 1533) is amended—

18 (1) by striking subsection (f); and

19 (2) by redesignating subsections (g), (h), and  
20 (i) in order as subsections (f), (g), and (h).

21 (c) CONSERVATION GUIDELINES.—Section 4 is  
22 amended in subsection (g), as redesignated by subsection  
23 (b)(2) of this section, by amending paragraph (3), as re-  
24 designated by section 304(b)(2) of this Act, to read as  
25 follows:

1           “(3) a system for developing and implementing,  
2           on a priority basis, conservation objectives and con-  
3           servation plans. The Secretary shall provide to the  
4           public notice of, and opportunity to submit written  
5           comments on, any guideline (including any amend-  
6           ment thereto) proposed to be established under this  
7           subsection.”.

## 8                           **TITLE VI—HABITAT** 9                           **PROTECTIONS**

### 10   **SEC. 601. FEDERAL BIOLOGICAL DIVERSITY RESERVE.**

11           Section 5A, as redesignated by section 501 of this  
12   Act, is amended to read as follows:

#### 13   **“SEC. 5A. PROTECTION OF HABITAT.**

14           “(a) ESTABLISHMENT OF NATIONAL BIOLOGICAL  
15   DIVERSITY RESERVE.—

16           “(1) IN GENERAL.—There is hereby established  
17           a National Biological Diversity Reserve (hereinafter  
18           in this Act referred to as the ‘Reserve’). The Reserve  
19           shall be composed of units of Federal and State  
20           lands designated in accordance with paragraph (2)  
21           and managed in accordance with paragraph (3).

22           “(2) DESIGNATION OF RESERVE UNITS.—(A)  
23           Not later than 18 months after the date of enact-  
24           ment of the Endangered Species Conservation and  
25           Management Act of 1995, the Secretary of the Inte-



1 rior and the Secretary of Agriculture shall designate  
2 to the Reserve by regulation those units of the na-  
3 tional conservation systems which are within the ju-  
4 risdiction of the Secretary concerned and which the  
5 Secretary determines would contribute to the protec-  
6 tion, maintenance, and enhancement of biological di-  
7 versity in accordance with the provisions of this Act.  
8 The term 'national conservation systems' means  
9 wholly federally owned lands within the National  
10 Park System, the National Wildlife Refuge System,  
11 or the National Wilderness Preservation System,  
12 and wild segments of rivers within the National Wild  
13 and Scenic Rivers System.

14 “(B) The Secretary of the Interior shall—

15 “(i) designate to the Reserve by regulation  
16 a unit of State-owned lands if such unit is nom-  
17 inated for designation by the Governor of the  
18 State and is managed under State law in ac-  
19 cordance with paragraph (3);

20 “(ii) designate to the Reserve by regulation  
21 privately owned land that is nominated for des-  
22 ignation by the owner of the land, and shall re-  
23 move such land from the Reserve if the owner  
24 requests removal;

1                   “(iii) remove from the Reserve by regula-  
2                   tion any unit designated pursuant to clause (i)  
3                   which the Secretary finds is not managed under  
4                   State law in accordance with paragraph (3);  
5                   and

6                   “(iv) remove from the Reserve any State-  
7                   owned lands at the request of the Governor of  
8                   that State.

9                   “(C) Designation of a Reserve unit shall not af-  
10                  fect any valid existing permit, right, right-of-way,  
11                  access, interest in land, right to use or receive water,  
12                  or property right.

13                  “(3) MANAGEMENT OF THE RESERVE.—(A)  
14                  Each unit of the Reserve shall have as an objective  
15                  for the management thereof the preservation, main-  
16                  tenance, and enhancement of biological diversity.  
17                  Such objective shall be supplementary to any other  
18                  objective established for such unit by or pursuant to  
19                  any provision of law applicable to such unit. Each  
20                  such unit shall be managed in accordance with such  
21                  objective to the extent that such objective is not in-  
22                  consistent with the purpose for which the unit was  
23                  established, other provisions of law applicable to  
24                  such unit, and the activities which occur on such  
25                  unit.

1           “(B) The manager of each Reserve unit should  
2 consistent with paragraph (4) utilize his authority to  
3 use active management and recovery measures, in-  
4 cluding those specified in section 5(b)(2)(A)(vi), and  
5 shall conduct a survey to determine the populations  
6 of species within the Reserve.

7           “(C) Nothing in this Act shall—

8                 “(i) alter, establish, or affect the respective  
9 rights of the United States, the States, or any  
10 person with respect to any water or water-relat-  
11 ed right; or

12                 “(ii) affect the laws, rules, and regulations  
13 pertaining to hunting, fishing, and other lawful  
14 wildlife harvest under existing State and Fed-  
15 eral laws and Indian treaties.

16           “(D) Within 1 year of the designation of a unit  
17 to the Reserve, the manager of such unit shall com-  
18 plete, and the Secretary concerned shall make avail-  
19 able to the public by notice in the Federal Register,  
20 an inventory of the species composing the biological  
21 diversity within such unit.

22           “(4) OTHER FEDERAL LANDS.—Nothing in this  
23 Act shall be construed as limiting the authority of  
24 the Secretary of the Interior or the Secretary of Ag-  
25 riculture to take such actions as are necessary and

1 authorized by other law to protect, maintain, and  
2 enhance biological diversity on other Federal lands  
3 not designated to the Reserve except that, before  
4 taking any such action, the Secretary concerned  
5 shall make a finding based on the best available sci-  
6 entific and commercial data, that the biological di-  
7 versity for which such action is proposed is not pro-  
8 tected, maintained, or enhanced in whole or substan-  
9 tial part on any unit of the Reserve. Such finding  
10 shall be published, along with the reasons therefor in  
11 the Federal Register.”.

12 **SEC. 602. LAND ACQUISITION.**

13 Section 5A, as redesignated by section 501 of this  
14 Act and as amended by section 601 of this Act, is amend-  
15 ed by adding at the end the following new subsection:

16 “(b) LAND ACQUISITION.—

17 “(1) PROGRAM.—The Secretary, and the Sec-  
18 retary of Agriculture with respect to the National  
19 Forest System, shall establish and implement a pro-  
20 gram to conserve fish, wildlife, and plants, including  
21 those which are determined to be endangered species  
22 or threatened species pursuant to section 4. To  
23 carry out such a program, the appropriate Sec-  
24 retary—

1           “(A) shall utilize the land acquisition and  
2           other authority under the Fish and Wildlife Act  
3           of 1956 (16 U.S.C. 742a et seq.), the Fish and  
4           Wildlife Coordination Act (16 U.S.C. 661 et  
5           seq.), and the Migratory Bird Conservation Act  
6           (16 U.S.C. 715 et seq.), as appropriate; and

7           “(B) is authorized to acquire by purchase,  
8           lease, donation, or otherwise, lands, waters, or  
9           interest therein, including short- or long-term  
10          conservation easements, and such authority  
11          shall be in addition to any other land acquisi-  
12          tion authority vested in that Secretary.

13          “(2) AVAILABILITY OF FUNDS FOR ACQUI-  
14          TION OF LANDS, WATER, ETC.—Funds made avail-  
15          able pursuant to the Land and Water Conservation  
16          Fund Act of 1965 (16 U.S.C. 4601-4 et seq.) may  
17          be used for the purpose of acquiring or leasing  
18          lands, waters, or interests therein under subsection  
19          (a) of this section.”.

20 **SEC. 603. PROPERTY EXCHANGES.**

21          Section 5A, as redesignated by section 501 of this  
22          Act and as amended by sections 601 and 602 of this Act,  
23          is amended by adding at the end the following new sub-  
24          sections:

25          “(c) EXCHANGES.—

1           “(1) **IN GENERAL.**—In accordance with sub-  
2           section (a), the Secretary of the Interior and the  
3           Secretary of Agriculture shall encourage exchanges  
4           of lands, waters, or interests in land or water within  
5           the jurisdiction of each Secretary (other than units  
6           of the National Park System and units of the Na-  
7           tional Wilderness Preservation System) for lands,  
8           waters, or interests in land or water that are not in  
9           Federal ownership and that are affected by this Act.

10           “(2) **TIMING OF EXCHANGES.**—An exchange  
11           under this subsection may be made if the Secretary  
12           of the Interior or the Secretary of Agriculture deter-  
13           mines, without a formal appraisal, that the lands to  
14           be exchanged are of approximately equal value.

15           “(3) **ENVIRONMENTAL ASSESSMENT.**—An envi-  
16           ronmental assessment shall be the only document  
17           under section 102(2) of the National Environmental  
18           Policy Act of 1976 (16 U.S.C. 4332(2)) that shall  
19           be prepared with respect to any exchange under this  
20           subsection.

21           “(4) **EXPEDITIOUS EXCHANGE DECISIONS.**—An  
22           exchange under this subsection shall be processed as  
23           expeditiously as practicable. The Secretary of the In-  
24           terior or the Secretary of Agriculture shall periodi-

1 cally provide information to the non-Federal land-  
2 owner on the status of the exchange.

3 “(5) APPLICABLE LAW.—The Secretary of the  
4 Interior and the Secretary of Agriculture shall proc-  
5 ess exchanges under this subsection in accordance  
6 with applicable laws that are consistent with this  
7 subsection.

8 “(d) VALUATION.—Any land, water, or interest in  
9 land or water to be acquired by the Secretary or the Sec-  
10 retary of Agriculture by purchase, exchange, donation, or  
11 otherwise under this section shall be valued as if the land,  
12 water, or interest in land or water were not subject to any  
13 restriction on use under this Act imposed after the date  
14 of acquisition by the current owner of the land, water, or  
15 interest in land or water.

16 “(e) \_\_\_\_.—For any land or water acquired by the  
17 Secretary or the Secretary of Agriculture by purchase, ex-  
18 change, lease, donation or otherwise under this section,  
19 the Secretary or Secretary of Agriculture shall ensure that  
20 such purchase, exchange, lease, donation, or other transfer  
21 shall not supersede, abrogate, or otherwise impair existing  
22 easements, rights-of-way, fencing, water sources, water de-  
23 livery lines or ditches, and current uses of adjacent land.”.

1 **TITLE VII—STATE AUTHORITY**  
2 **TO PROTECT ENDANGERED**  
3 **AND THREATENED SPECIES**

4 **SEC. 701. STATE AUTHORITY.**

5 (a) **IN GENERAL.**—Section 6 (16 U.S.C. 1535) is  
6 amended by striking subsection (c) and all that follows  
7 through subsection (f) and inserting the following:

8 “(c) **STATE AUTHORITY TO PROTECT ENDANGERED**  
9 **AND THREATENED SPECIES.**—

10 “(1) **DELEGATION OF AUTHORITY.**—In further-  
11 ance of the purposes of this Act, the Secretary may  
12 delegate to a State which establishes and maintains  
13 an adequate program for the conservation of endan-  
14 gered species and threatened species the authority  
15 contained in this Act with respect to species of fish,  
16 wildlife, and plants that are residents in the State.  
17 Within 120 days after the Secretary receives a cer-  
18 tified copy of such a proposed State program, the  
19 Secretary shall make a determination whether such  
20 program will be adequate to provide protections to  
21 endangered species and threatened species in such  
22 State. In order for a State program to be deter-  
23 mined to be an adequate program for the conserva-  
24 tion of endangered species and threatened species,



1 the Secretary must find that under the State pro-  
2 gram—

3 “(A)(i) authority resides in the State agen-  
4 cy to conserve resident species of fish or wildlife  
5 determined by the State agency or the Sec-  
6 retary to be endangered species or threatened  
7 species;

8 “(ii) the State agency has established ac-  
9 ceptable conservation programs, consistent with  
10 the purposes and policies of this Act, for all  
11 resident species of fish or wildlife in the State  
12 which are deemed by the Secretary to be endan-  
13 gered species or threatened species or for those  
14 species or taxonomic groups of species which  
15 the State proposes to cover under its program,  
16 and has furnished a copy of such plan and pro-  
17 gram together with all pertinent details, infor-  
18 mation, requested to the Secretary;

19 “(iii) the State agency is authorized to  
20 conduct investigations to determine the status  
21 and requirements for survival of resident spe-  
22 cies of fish and wildlife;

23 “(iv) an agency of the State is authorized  
24 to establish programs, including the acquisition  
25 of land or aquatic habitat or interests therein,

1 for the conservation of resident endangered spe-  
2 cies or threatened species of fish or wildlife;

3 “(v) provision is made for public participa-  
4 tion in designating resident species of fish or  
5 wildlife as endangered species or threatened  
6 species; and

7 “(vi) the State agency has initiated or en-  
8 couraged voluntary or incentive based programs  
9 to further the conservation objectives for the  
10 species; or

11 “(B)(i) the requirements set forth in  
12 clauses (iii), (iv), and (v) of subparagraph (A)  
13 are complied with, and

14 “(ii) plans are included under which imme-  
15 diate attention will be given to those resident  
16 species of fish and wildlife which are deter-  
17 mined by the Secretary or the State agency to  
18 be endangered species or threatened species and  
19 which the Secretary and the State agency agree  
20 are most urgently in need of conservation pro-  
21 grams.

22 “(2) PROHIBITIONS NOT AFFECTED.—A delega-  
23 tion to a State whose program is deemed adequate  
24 pursuant to paragraph (1) shall not affect the appli-  
25 cability of prohibitions set forth in or authorized

1 pursuant to section 4(d) or section 9(a)(1) with re-  
2 spect to the taking of any resident endangered spe-  
3 cies or threatened species in the State.

4 “(d) ALLOCATION OF FUNDS.—

5 “(1) FINANCIAL ASSISTANCE.—The Secretary  
6 may provide financial assistance to any State,  
7 through its respective State agency, which has re-  
8 ceived delegation pursuant to subsection (c) of this  
9 section to assist in development of programs for the  
10 conservation of endangered species and threatened  
11 species or to assist in monitoring the status of can-  
12 didate species pursuant to subparagraph (C) of sec-  
13 tion 4(b)(3) and recovered species pursuant to sec-  
14 tion 4(f). The Secretary shall allocate each annual  
15 appropriation made in accordance with subsection (i)  
16 to such States based on consideration of—

17 “(A) the international commitments of the  
18 United States to protect endangered species or  
19 threatened species;

20 “(B) the readiness of a State to proceed  
21 with a conservation program consistent with the  
22 objectives and purposes of this Act;

23 “(C) the number of endangered species  
24 and threatened species within a State;

1           “(D) the potential for restoring endan-  
2           gered species and threatened species within a  
3           State;

4           “(E) the relative urgency to initiate a pro-  
5           gram to restore and protect an endangered spe-  
6           cies or threatened species in terms of survival  
7           of the species;

8           “(F) the importance of monitoring the sta-  
9           tus of candidate species within a State to pre-  
10          vent a significant risk to the well-being of any  
11          such species; and

12          “(G) the importance of monitoring the sta-  
13          tus of recovered species within a State to assure  
14          that such species do not return to the point at  
15          which the measures provided pursuant to this  
16          Act are again necessary.

17          So much of the annual appropriation made in ac-  
18          cordance with subsection (i) allocated for obligation  
19          to any State for any fiscal year as remains unobli-  
20          gated at the close thereof may be made available to  
21          that State until the close of the succeeding fiscal  
22          year. Any amount allocated to any State which is  
23          unobligated at the end of the period during which it  
24          is available for expenditure may be made available

1 for expenditure by the Secretary in conducting pro-  
2 grams under this section.

3 “(2) CONTENTS OF DELEGATION AGREE-  
4 MENT.—Such delegation shall provide for—

5 “(A) the actions to be taken by the Sec-  
6 retary and the States;

7 “(B) the benefits that are expected to be  
8 derived in connection with the conservation of  
9 endangered species or threatened species;

10 “(C) the estimated cost of these actions;  
11 and

12 “(D) the share of such costs to be borne  
13 by the Federal Government and by the States;  
14 except that—

15 “(i) the Federal share of such pro-  
16 gram costs shall not exceed 75 percent of  
17 the estimated program cost stated in the  
18 agreement; and

19 “(ii) the Federal share may be in-  
20 creased to 90 percent whenever two or  
21 more States having a common interest in  
22 one or more endangered species or threat-  
23 ened species, the conservation of which  
24 may be enhanced by cooperation of such

1 States, enter jointly into an agreement  
2 with the Secretary.

3 The Secretary may, in the Secretary's discretion,  
4 and under such rules and regulations as he may pre-  
5 scribe, advance funds to the State for financing the  
6 United States pro rata share agreed upon in the co-  
7 operative agreement. For the purposes of this sec-  
8 tion, the non-Federal share may, in the discretion of  
9 the Secretary, be in the form of money or real prop-  
10 erty, the value of which will be determined by the  
11 Secretary, whose decision shall be final.

12 “(3) COMPLIANCE WITH PROCEDURES.—In im-  
13 plementing this Act under authority delegated to a  
14 State by the Secretary, the State shall comply with  
15 all requirements, prohibitions, and procedures set  
16 forth by this Act.

17 “(e) REVIEW OF STATE PROGRAMS.—Any action  
18 taken by the Secretary under this section shall be subject  
19 to his periodic review at no greater than intervals of 5  
20 years.

21 “(f) CONFLICTS BETWEEN FEDERAL AND STATE  
22 LAWS.—Any State law or regulation which applies with  
23 respect to the importation or exportation of, or interstate  
24 or foreign commerce in, endangered species or threatened  
25 species is void to the extent that it may effectively—

1           “(1) permit what is prohibited by this Act or by  
2 any regulation which implements this Act, or

3           “(2) prohibit what is authorized pursuant to an  
4 exemption or permit provided for in this Act or in  
5 any regulation which implements this Act. This Act  
6 shall not otherwise be construed to void any State  
7 law or regulation which is intended to conserve mi-  
8 gratory, resident, or introduced fish or wildlife, or to  
9 permit or prohibit sale of such fish or wildlife. Any  
10 State law or regulation respecting the taking of an  
11 endangered species or threatened species may be  
12 more restrictive than the exemptions or permits pro-  
13 vided for in this Act or in any regulation which im-  
14 plements this Act.”.

15       (b) CONFORMING AMENDMENT.—Section 6(g)(2)(A)  
16 (16 U.S.C. 1535(g)(2)(A)) is amended to read as follows:

17           “(A) to which the Secretary has delegated au-  
18 thority under subsection (c); or”.

19 **SEC. 702. STATE PROGRAMS AFFECTED BY THE CONVEN-**  
20 **TION.**

21       Section 8A (16 U.S.C. 1537a), as amended by section  
22 207(b) of this Act, is amended by adding at the end the  
23 following new subsection:

24           “(h) ISSUANCE OF PERMITS FOR EXPORT.—

1           “(1) COMPLIANCE WITH STATE RECOMMENDA-  
2           TION.—In any instance in which a State has a pro-  
3           gram for management of a native species which is  
4           the subject of a request for an export permit under  
5           the Convention, the Secretary shall act in accord-  
6           ance with the recommendation of the State unless  
7           the Secretary makes a finding and publishes a notice  
8           in the Federal Register that scientific evidence justi-  
9           fies a conclusion contrary to the advice of the State.

10           “(2) APPEAL.—The State which is the subject  
11           to such a finding, or any person in that State di-  
12           rectly affected because of inability to obtain a per-  
13           mit, may appeal the finding to an Administrative  
14           Law Judge or a court. The burden shall be on the  
15           Secretary to show that the evidence supports a find-  
16           ing contrary to the recommendation of the State.”.

## 17           **TITLE VIII—FUNDING OF** 18           **CONSERVATION MEASURES**

### 19           **SEC. 801. AUTHORIZING INCREASED APPROPRIATIONS.**

20           Section 15 (16 U.S.C. 1542) is amended to read as  
21 follows:

#### 22           **“SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

23           “(a) IN GENERAL.—In addition to the amounts au-  
24 thorized to be appropriated under section 6(i) and sub-



1 sections (b) through (e), there are authorized to be appro-  
2 priated—

3           “(1) to the Department of the Interior to carry  
4 out the duties of the Secretary of the Interior under  
5 this Act \$110,000,000 for fiscal year 1996,  
6 \$120,000,000 for fiscal year 1997, \$130,000,000 for  
7 fiscal year 1998, \$140,000,000 for fiscal year 1999,  
8 \$150,000,000 for fiscal year 2000, and  
9 \$160,000,000 for fiscal year 2001;

10           “(2) to the Department of Commerce to carry  
11 out the duties of the Secretary of Commerce under  
12 this Act \$15,000,000 for fiscal year 1996,  
13 \$20,000,000 for fiscal year 1997, \$25,000,000 for  
14 fiscal year 1998, \$30,000,000 for fiscal year 1999,  
15 \$35,000,000 for fiscal year 2000, and \$40,000,000  
16 for fiscal year 2001; and

17           “(3) to the Department of Agriculture to carry  
18 out the duties of the Secretary of Agriculture under  
19 this Act \$4,000,000 for each of fiscal years 1996  
20 through 2001.

21           “(b) COOPERATIVE MANAGEMENT AGREEMENTS.—  
22 There are authorized to be appropriated to the Depart-  
23 ment of the Interior to carry out section 6(b),  
24 \$20,000,000 for each of fiscal years 1996 through 2001,  
25 to remain available until expended.

1       “(c) CONVENTION IMPLEMENTATION.—There are au-  
2 thORIZED to be appropriated to the Department of the Inte-  
3 rior to carry out section 8A(e) \$1,000,000 for each of fis-  
4 cal years 1996 through 2001, to remain available until ex-  
5 pended.

6       “(d) NON-FEDERAL CONSERVATION PLANNING.—  
7 There are authorized to be appropriated to the Depart-  
8 ment of the Interior to carry out section 10(a)(2)(F)  
9 \$20,000,000 for each of fiscal years 1996 through 2001,  
10 to remain available until expended.

11       “(e) HABITAT CONSERVATION GRANTS.—There are  
12 authorized to be appropriated to the Department of the  
13 Interior to provide habitat conservation grants under sec-  
14 tion 6(b)(14) \$20,000,000 for each of fiscal years 1996  
15 though 2001, to remain available until expended.”.

16 **SEC. 802. FUNDING OF FEDERAL MANDATES.**

17       Section 16 is amended to read as follows:

18 **“SEC. 16. FEDERAL COST-SHARING REQUIREMENTS FOR**  
19 **CONSERVATION OBLIGATIONS.**

20       “(a) DIRECT COSTS DEFINED.—In this section, the  
21 term ‘direct costs’ means—

22               “(1) expenditures on labor, material, facilities,  
23 utilities, equipment, supplies and other resources  
24 which are necessary to undertake a specific con-  
25 servation measure;

1           “(2) increased purchase power costs and lost  
2 revenues caused by changes in the operation of a hy-  
3 dropower system from which the non-Federal person  
4 or Federal power marketing administration markets  
5 power to meet a specific conservation measure; and

6           “(3) other reimbursable costs specifically identi-  
7 fied by the Secretary as directly related to the per-  
8 formance of a specific conservation measure.

9           “(b) COST-SHARING.—

10           “(1) CONSERVATION PLANS.—For any non-  
11 Federal person or Federal power marketing adminis-  
12 tration, the Secretary shall pay 50 percent of any di-  
13 rect costs that result from the compliance by the  
14 person or administration mandated by a conserva-  
15 tion plan issued under section 5 or any conservation  
16 measure that provides protection to a listed species  
17 under a plan developed under the Pacific Northwest  
18 Electric Power Planning and Conservation Act (16  
19 U.S.C. 839 et seq.) including a plan that provides  
20 protection to a larger population unit of the same  
21 listed species.

22           “(2) CONSULTATION REQUIREMENTS.—For any  
23 non-Federal person or Federal power marketing ad-  
24 ministration, the Secretary shall pay 50 percent of  
25 direct costs that result solely from requirements im-

1 posed by the Secretary on the person or marketing  
2 administration under section 7.

3 “(3) INCIDENTAL TAKE PERMITS.—For any  
4 non-Federal person issued an incidental take permit  
5 under section 10, the Secretary shall pay to such  
6 person 50 percent of the direct costs of preparing  
7 the application for the permit and implementing the  
8 terms and conditions of the permit.

9 “(4) COOPERATIVE MANAGEMENT AGREE-  
10 MENTS.—The Secretary shall pay 50 percent of the  
11 direct costs of preparing and implementing the  
12 terms and conditions of a cooperative management  
13 agreement incurred by a party to the agreement and  
14 any costs incurred by any other non-Federal person  
15 or Federal power marketing administration subject  
16 to the terms of such agreement.

17 “(c) METHOD OF COST-SHARING.—

18 “(1) IN GENERAL.—Except as provided in para-  
19 graph (2), the Secretary may make a contribution  
20 required under subsection (b) by—

21 “(A) providing a habitat reserve grant  
22 under section 6(b)(14);

23 “(B) acquiring, from or for the party to  
24 the cost-share, land or an interest in land as  
25 provided in section 5A; or

1                   “(C) providing appropriated funds.

2                   “(2) COST-SHARE PAYMENT FOR FEDERAL  
3 POWER MARKETING ADMINISTRATIONS AND OTHER  
4 STATE OR LOCAL GOVERNMENTAL ENTITIES.—The  
5 Secretary shall make a contribution under sub-  
6 section (b) to a Federal power marketing adminis-  
7 tration or any other State or local governmental en-  
8 tity by providing appropriated funds directly to the  
9 administration or governmental entity.

10                   “(3) APPROPRIATED FUNDS.—To the maximum  
11 extent practicable, any appropriated funds paid by  
12 the Secretary under paragraphs (1) and (2) shall be  
13 paid directly (in lieu of reimbursement) to the party,  
14 person, or administration.

15                   “(4) LOANS.—The Secretary may not consider  
16 a loan to the party to the cost-share as a contribu-  
17 tion or portion of a contribution under subsection  
18 (b).

19                   “(5) RECOVERED COSTS.—The Secretary may  
20 not claim as a portion of the Federal share under  
21 subsection (b) any costs to the Federal Government  
22 that are recovered through rates for the sale or  
23 transmission of power or water.

24                   “(6) EFFECT OF FEDERAL NONPAYMENT.—If  
25 the Secretary fails to make the contribution required

1 under subsection (b), the application of the applica-  
2 ble provision of the conservation plan, requirement  
3 under section 7, term under the incidental take per-  
4 mit, or provision of the cooperative management  
5 agreement shall be suspended until such time as the  
6 full contribution is made. If the suspended provision  
7 or requirement includes a conservation easement or  
8 other instrument restricting title to the property of  
9 the non-Federal person, nonpayment of the full con-  
10 tribution shall result in the nullification of the pre-  
11 viously granted restriction on title.

12 “(7) IN-KIND CONTRIBUTIONS.—A non-Federal  
13 person or Federal power marketing administration  
14 may include in-kind contributions in calculating the  
15 appropriate share of the costs of the person or ad-  
16 ministration under this section.

17 “(8) COSTS PAID BY THE SECRETARY.—Com-  
18 pensation from the Federal Government under sec-  
19 tion 19 may not cover costs incurred by a non-Fed-  
20 eral person that were otherwise paid by the Sec-  
21 retary under subsection (b).

22 “(d) EXISTING COST-SHARING AGREEMENTS.—Any  
23 cost-sharing agreement with a non-Federal person pro-  
24 vided in any recovery plan or other agreement in existence  
25 prior to the date of enactment of this subsection shall re-

1 main in effect unless the non-Federal person requests that  
2 the cost-sharing percentage be reconsidered.

3 “(e) ADJUSTMENTS TO COST-SHARING PERCENT-  
4 AGE.—At the request of the non-Federal person, the Sec-  
5 retary may adjust the percentage of the Federal contribu-  
6 tion to a higher share.”.

7 **SEC. 803. ENDANGERED SPECIES AND THREATENED SPE-**  
8 **CIES CONSERVATION TRUST FUND.**

9 Section 13 is amended to read as follows:

10 **“SEC. 13. ENDANGERED SPECIES AND THREATENED SPE-**  
11 **CIES CONSERVATION TRUST FUND.**

12 “(a) ESTABLISHMENT.—There is established in the  
13 general fund of the Treasury a separate account which  
14 shall be known as the ‘Endangered Species and Threat-  
15 ened Species Conservation Trust Fund’ (in this section re-  
16 ferred to as the ‘Fund’).

17 “(b) CONTENTS.—The Fund shall consist of the fol-  
18 lowing:

19 “(1) Amounts received as gifts, bequests, and  
20 devises under subsection (d).

21 “(2) Other amounts appropriated to or other-  
22 wise deposited in the Fund.

23 “(c) USE.—Amounts in the fund shall be available  
24 to the Secretary, subject to appropriations, for the follow-  
25 ing:

1           “(1) Payment of compensation under section  
2           19.

3           “(2) Habitat conservation grants under section  
4           6(b)(11).

5           “(3) Payment of cost sharing under section 16.

6           “(d) GIFTS, BEQUESTS, AND DEVISES.—

7           “(1) IN GENERAL.—The Secretary may accept,  
8           use, and dispose of gifts, bequests, or devises of  
9           services or property, both real and personal, for the  
10          purpose of carrying out this Act.

11          “(2) DEPOSIT INTO FUND.—Gifts, bequests, or  
12          devises of money, and proceeds from sales of other  
13          property received as gifts, bequests, or devises, shall  
14          be deposited in the Fund and shall be available for  
15          disbursement upon order of the Secretary.

16          “(3) TREATMENT.—For purposes of Federal in-  
17          come, estate, and gift taxes, property accepted under  
18          this subsection shall be considered as a gift, bequest,  
19          or devise to the United States.”.

## 20           **TITLE IX—MISCELLANEOUS** 21           **PROVISIONS**

### 22           **SEC. 901. AMENDMENTS TO DEFINITIONS.**

23           Section 3 (16 U.S.C. 1532) is amended—



1           (1) by adding after paragraph (16) (as added  
2 by section 401(e)(1) of this Act) the following new  
3 paragraph:

4           “(17) The term ‘non-Federal person’ means a  
5 person other than an officer, employee, agent, de-  
6 partment, or instrumentality of the Federal Govern-  
7 ment or a foreign government, acting in the official  
8 capacity of the person.”; and

9           (2) by amending paragraph (3) (as redesign-  
10 nated by section 102(a)(1) of this Act) to read as  
11 follows:

12           “(3) The term ‘commercial activity’ means all  
13 activities of industry and trade, including, but not  
14 limited to, the buying or selling of commodities and  
15 activities conducted for the purpose of facilitating  
16 such buying and selling, except that it does not in-  
17 clude exhibition of commodities or species by exhibi-  
18 tors licensed under the Animal Welfare Act (7  
19 U.S.C. 2131 et seq.), museums, or similar cultural  
20 or historical organizations.”.

21 **SEC. 902. REVIEW OF SPECIES OF NATIONAL INTEREST.**

22           No later than 60 days after the date of the enactment  
23 of this Act, the Secretary (as that term is defined in sec-  
24 tion 3 of the Endangered Species Act of 1973, as amended  
25 by this Act) shall identify those species which are listed

1 under section 4 of that Act as a result of being determined  
2 to be a population segment. No later than one year after  
3 the date of the enactment of this Act, the Secretary shall  
4 review and determine whether or not it is in the national  
5 interest to continue to list each such population segment.  
6 Those population segments which the Secretary rec-  
7 ommends for continued listing in the national interest  
8 shall be submitted to the Congress for approval. Any pop-  
9 ulation segment which is not determined to be in the na-  
10 tional interest shall be delisted within 60 days after that  
11 determination.

12 **SEC. 903. PREPARATION OF CONSERVATION PLANS FOR**  
13 **SPECIES LISTED BEFORE ENACTMENT OF**  
14 **THIS ACT.**

15 (a) LISTED SPECIES WITHOUT RECOVERY PLANS.—  
16 (1) PRIORITY FOR DEVELOPMENT OF CON-  
17 SERVATION PLANS.—Not later than 30 days after  
18 the date of enactment of this Act, the Secretary (as  
19 defined in section 3 of the Endangered Species Act  
20 of 1973, as amended by this Act) shall publish a list  
21 of all species that were determined to be endangered  
22 species or threatened species under section 4 of the  
23 Act (16 U.S.C. 1533) for which no final recovery  
24 plans were issued under section 4(f) of the Act (16  
25 U.S.C. 1533(f)) (as in effect on the day before the

1 date of enactment of this Act) divided equally into  
2 three tiers of priority for preparation of conservation  
3 objectives and conservation plans therefor pursuant  
4 to section 5 of the Act. Any species which is listed  
5 as an endangered species or threatened species in  
6 more than one State shall be placed in the first tier  
7 of priority.

8 (2) SCHEDULE FOR ADOPTION OF PLANS.—The  
9 Secretary shall publish pursuant to section 5 of the  
10 Endangered Species Act of 1973 a conservation ob-  
11 jective, draft conservation plan, and final conserva-  
12 tion plan (except when a conservation objective is  
13 published pursuant to section 5(b)(3)(C) of such  
14 Act) for each species within each tier of priority  
15 identified pursuant to paragraph (1) within the fol-  
16 lowing periods after the date of enactment of this  
17 Act:

18 (A) Conservation objective: First tier, 120  
19 days; second tier, 12 months; and third tier, 24  
20 months.

21 (B) Draft conservation plan: First tier, 6  
22 months; second tier, 18 months; and third tier,  
23 30 months.

1 (C) Final conservation plan: First tier, 12  
2 months; second tier, 24 months; and third tier,  
3 36 months.

4 (b) LISTED SPECIES WITH RECOVERY PLANS.—

5 (1) PRIORITY FOR REVISION OF EXISTING  
6 PLANS.—Except as provided in paragraph (3), a  
7 final recovery plan issued under section 4(f) of the  
8 Endangered Species Act of 1973 (16 U.S.C.  
9 1533(f)) (as in effect on the day before the date of  
10 enactment of this Act) shall continue in effect until  
11 the expiration of the deadline for revision thereof es-  
12 tablished under this paragraph. Within 90 days after  
13 the date of enactment of this Act, the Secretary  
14 shall publish a list of all species that were deter-  
15 mined to be endangered species or threatened spe-  
16 cies under section 4 of such Act (16 U.S.C. 1533)  
17 and for which final recovery plans were issued under  
18 section 4(f) of such Act (16 U.S.C. 1533(f)) (as in  
19 effect on the day before the date of enactment of  
20 this Act) divided equally into three tiers of priority  
21 for preparation of conservation objectives pursuant  
22 to section 5(b) of such Act and revisions of the re-  
23 covery plans consistent with the requirements for  
24 conservation plans set forth in section 5(c) of such  
25 Act. Any species which is listed as an endangered

1 species or threatened species in more than one State  
2 shall be placed in the first tier of priority.

3 (2) SCHEDULE FOR REVISION OF PLANS.—The  
4 Secretary shall publish pursuant to section 5 of the  
5 Endangered Species Act of 1973 a conservation ob-  
6 jective, draft revision of the existing recovery plan,  
7 and final revision of the existing recovery plan (ex-  
8 cept when a conservation objective is published pur-  
9 suant to section 5(b)(3)(C) of such Act) for each  
10 species within each tier of priority identified pursu-  
11 ant to paragraph (1) within the following periods  
12 after the date of enactment of this Act:

13 (A) Conservation objective: First tier, 180  
14 days; second tier, 18 months; and third tier, 30  
15 months.

16 (B) Draft revised recovery plan: First tier,  
17 12 months; second tier, 24 months; and third  
18 tier, 36 months.

19 (C) Final revised recovery plan: First tier,  
20 18 months; second tier, 30 months; and third  
21 tier, 42 months.

22 (3) SPECIES FOR WHICH NO CONSERVATION  
23 PLAN IS REQUIRED.—If the Secretary publishes a  
24 conservation objective for which no conservation plan  
25 is required pursuant to section 5(b)(3)(C) of the En-

1       dangered Species Act of 1973 for any species subject  
2       to this subsection, the final recovery plan applicable  
3       to the species shall be rescinded.

4       (c) PROHIBITION ON ADDITIONAL REQUIRE-  
5       MENTS.—The Secretary or any other Federal agency may  
6       not require any increase in any measurable criterion con-  
7       tained in, or any site specific management action in addi-  
8       tion to those provided in, a final recovery plan issued  
9       under section 4(f) of the Endangered Species Act of 1973  
10      (16 U.S.C. 1533(f)) (as in effect on the day before the  
11      date of enactment of this Act) until such time as a con-  
12      servation plan, or, pursuant to section 5(b)(3)(C) of such  
13      Act, a conservation objective, has been published under  
14      section 5 of such Act.

15      (d) EXISTING BIOLOGICAL OPINIONS.—In conjunc-  
16      tion with the issuance of a conservation plan, or, pursuant  
17      to section 5(b)(3)(C) of the Endangered Species Act of  
18      1973, a conservation objective under subsection (a) or (b),  
19      the Secretary (as defined in section 3 of such Act (16  
20      U.S.C. 1532)) shall review and reissue, in accordance with  
21      section 7 of such Act, any written opinion of the Secretary  
22      that relates to the affected species and was issued after  
23      January 1, 1995, under section 7(b)(3) of such Act (16  
24      U.S.C. 1536(b)(3)) (as in effect on the day before the date  
25      of enactment of this Act).

1 **SEC. 904. CONFORMING AMENDMENT TO TABLE OF CON-**  
 2 **TENTS.**

3 The table of contents at the end of the first section  
 4 is amended to read as follows:

5 **“TABLE OF CONTENTS**

- “Sec. 2. Findings, purposes, and policy.
- “Sec. 3. Definitions.
- “Sec. 4. Determination of endangered species and threatened species.
- “Sec. 5. Species conservation plans.
- “Sec. 5A. Protection of habitat.
- “Sec. 6. Cooperation with non-Federal persons.
- “Sec. 7. Interagency cooperation.
- “Sec. 8. International cooperation.
- “Sec. 8A. Convention implementation.
- “Sec. 9. Prohibited acts.
- “Sec. 10. Exceptions.
- “Sec. 11. Penalties and enforcement.
- “Sec. 12. Endangered plants.
- “Sec. 13. Endangered Species and Threatened Species Conservation Trust Fund.
- “Sec. 14. Notice of hearings.
- “Sec. 15. Authorization of appropriations.
- “Sec. 16. Federal cost-sharing requirements for conservation obligations.
- “Sec. 17. Marine Mammal Protection Act of 1972.
- “Sec. 18. Annual cost analysis by the Fish and Wildlife Service.
- “Sec. 19. Right to compensation.
- “Sec. 20. Recognizing net benefits to aquatic species.”.

Statement of the Honorable  
WILLIAM M. THOMAS  
Committee on Resources  
Endangered Species Conservation and Management Act of 1995  
September 20, 1995

Mr. Chairman and members of the committee, I appreciate the opportunity to comment today on H.R. 2275, which will provide for an Endangered Species Act (ESA) that respects private property while broadening conservation efforts for endangered and threatened species to embrace private-public partnerships. For too long, this well-intentioned Act of Congress has been harming our economy and wasting public resources. H.R. 2275 will provide more tools to help protect and conserve species while eliminating the bureaucratic abuses allowed under present law.

Property owners in Kern and Tulare Counties in California and nationwide have gotten the message from the current Act, that the government places more value on the existence of species like the fairy shrimp and the blunt-nose leopard lizard than on people. That message is conveyed by environmental groups and bureaucrats who are too far removed from the human side of the equation. It is a message made explicit in the Act itself, which effectively precludes consideration of all factors other than the supposed "intrinsic value" of a species. Congress has declared in the Act that such species are of "incalculable" value, prompting the Supreme Court to rule that the "plain intent of Congress was to prevent extinction, whatever the cost." Is it any wonder then that Constitutional rights of people are relegated to a secondary status behind the non-Constitutional rights of rats and weeds?

The fact is that if Congress knew in 1974 how the Act would have turned out, it would never have passed the legislation in the first place -- at least not in its current form.

Perhaps part of the problem is the initial process by which ESA was created in 1973, when only three hearings were held on the legislation, all in Washington, D.C. By contrast, in this new Congress, H.R. 2275, the Endangered Species Conservation and Management Act,



is the product of ten Endangered Species Task Force hearings, seven of those hearings conducted outside of Washington. Over one hundred witnesses testified at these field hearings, and over eight thousand people attended the hearings, as well as twenty five Members of Congress.

H.R. 2275 recognizes that the key to protecting threatened or endangered species is through incentives and rewards, not threats and fines. The bill encourages voluntary measures to protect species, including cooperative management agreements, habitat reserve grants, land exchanges, and habitat conservation planning. It also establishes a "Critical Habitat Reserve Program" - to provide payments for farmers to set aside habitat. Finally, it provides numerous tax incentives to reward people for species conservation and good land stewardship.

The Endangered Species Conservation and Management Act will encourage citizens to actively involve themselves in species conservation efforts, not hinder them with rigorous paperwork, senseless bureaucracy, and burdensome costs. If society wants to protect species, then society should pay for it, and not lay the costs onto the backs of that segment of society who own property on which endangered species live. We like animals, and we like nature, but something is fundamentally wrong when a person is paying property taxes to local government on property the federal government says he cannot use. The current Endangered Species Act is making private property owners pay the societal costs of what amounts to an ideologically-driven biodiversity program.

If species protection benefits all of us, then we should be willing to compensate those landowners whose land is effectively taken to protect endangered species. Those families that make their living from the land must be protected from decreasing values of use of their land. Until such steps are taken, the Act will continue to fail to achieve its goal of federal wildlife protection which reflects the will of the American people. If Congress is steadfast and innovative in providing incentives for landowners, compensation becomes the last resort, but one that is needed to ensure that all stakeholders in species protection work towards a management plan fair to everyone. H.R. 2275 compensates property owners who are

negatively impacted by endangered species, based on the premise that a small number of individuals should not bear the entire burden of a public policy decision.

It has taken a Republican Congress to bring the ESA back to the drawing board, and it has taken a Republican Congress to allow public input into the reform process. Last year the Merchant Marine and Fisheries Committee, which held jurisdiction over the Act, refused to vote to reauthorize or even hold hearings on the ESA. Why? Because the Democratic leadership of the 103rd Congress realized that they could never reauthorize the bill in its current form. Yet they continued to appropriate funds for this unpopular law, and the Fish and Wildlife Service continued to enforce the ESA, despite its uncertain status.

Mr. Chairman, the Act, as currently written, does not adequately address the economic and societal costs associated with the preservation of species. People and jobs are important and I cannot support laws that ignore that fact. It is the duty of the Congress to reform the Endangered Species Act, so that it will contain strict requirements for scientific documentation and mandate objective evaluation of evidence prior to any species listings and habitat designations. H.R. 2275 does just that.

Mr. Chairman, we are not against bio-diversity or preserving valuable species. What we do oppose is a federal bureaucracy that doesn't know about how hard working people go about making an honest living and taking care of their land. H.R. 2275 bases conservation efforts on the best possible science to restore the faith of the public in decisions made by the government. A listing decision will be based on current factual information and requires an adequate peer review of the data. It also provides that the data used in the process is open to the public. This represents a dramatic shift from the current law, to one which will achieve its aim of protecting endangered or threatened species while protecting private property owners rights and jobs.

I also come before you today to discuss an amendment I am proposing to assist with the reintroduction of the California condor in California, by enhancing and encouraging cooperation

between government condor recovery efforts and private landowners who are instrumental to the effort. It is the judgment of the Fish and Wildlife Service that successful recovery of the California condor will require that condor habitat not be restricted to public lands. As a result, private landowners must be made an active part of the recovery effort, and receive assurances that their efforts to assist in the recovery of the condor will not severely restrict their activities.

My amendment accomplishes two specific things: 1) it removes a largely obsolete critical habitat designation from the largest contiguous block of private land, that of Tejon Ranch, now designated as part of the historical critical habitat for the bird, and 2) it establishes in law that reintroduced California condors will be treated as an experimental population, as currently mandated under Section 10 (j) of the ESA when and while such birds are occupying or using public lands in California. My amendment is essential to enable private landowners to actively cooperate with condor recovery efforts. The condor's value to California and to society demand that the recovery effort be practically structured so as to be beneficial to the species while not unduly burdensome to private landowners.

TESTIMONY OF ARIZONA GOVERNOR J. FIFE SYMINGTON III  
BEFORE HOUSE RESOURCES COMMITTEE

Professional foresters in the southwest are deeply concerned. Unless conditions change soon, they predict that catastrophic wildfires will raze large tracts of forest. These fires will cause immense economic losses, particularly in the growing urban-wildlands interface, and scar the fragile arid forests for generations. Yet foresters are being prevented from managing for forest health by the political agenda of self-anointed environmentalists, who would prefer that trees burn rather than be harvested for timber. These extremists have invoked the Endangered Species Act to prevent timber harvesting in the name of a "threatened" species, the Mexican spotted owl. It is ironic that wildfire, drought, pests and disease all present a major threat to the forest habitat these activists seek to protect, and that "old growth" is the type most at risk.

Critics of the Endangered Species Act argue that it is a law out of balance. Because the law allows species to be listed, and management of land restricted, on the basis of projections, speculation, assumption, and "data" that is neither field-tested nor peer reviewed, it has been misused to further the political agendas of a select few environmental activists. The Mexican spotted owl and other Arizona species listed or proposed for listing present excellent examples of this abuse.

The Endangered Species Conservation and Management Act of 1995 (the "Young-Pombo" bill), introduced in both houses of Congress earlier this month would correct the ESA's most glaring defects while enhancing its potential to protect rare species. The package of reforms takes a number of important steps in the right direction to restore balance and common sense to a law that has gone badly awry.

The beneficial effects anticipated to result from the Young-Pombo bill are best illustrated by example, including the Mexican spotted owl.

1. Young-Pombo Bill Would Better Assure Scientific Validity of Decisions Affecting Listed Species

The Young-Pombo bill requires that the federal government actively solicit information when appropriate, and consider all available evidence, not just that furnished by those who petition for an action, or agency personnel who are often affiliated with the entities that petition for listing. The bill would also require field testing of data, and provide for peer review of important scientific information on which it relies. By improving the reliability of the process, the bill would reduce the number of unjustified listings and the waste of resources that results.

The listing and determination of habitat for the Mexican spotted owl illustrates the importance of these changes. Despite the absence of evidence that the owl was in decline, the owl was listed as "threatened" in 1993, based upon the petition of Dr. Robin D. Silver. Dr. Silver's stated objective is to "save old growth forests;" the owl is incidental to the objective, the means to an end.

The absence of a requirement that data be scientifically valid allowed the manipulation of the law so that a species that is not truly in decline could be used to prevent timber harvest. The scientific evidence strongly suggests that the owl is not threatened, that the owl is not a native inhabitant of southwestern forests, and that the owl does not depend upon old growth for its survival. The Mexican Spotted Owl Recovery Team, experts assembled to develop a plan to protect the owl, stated in its March, 1995 Draft Recovery Plan that there is "no undisputable evidence. . .that the [MSO] population is declining or is significantly below historical levels...Rather than any documented population decline, the main reasons for the species' listing were threats to existing habitat and the lack of regulatory mechanisms to control those threats." (The perceived "threat" to owl habitat, evenaged timber management, had largely been discontinued years before the owl was listed.)

The historical records from naturalists who surveyed Arizona indicate that until the early 1900's, the owl was reported primarily in southern Arizona, in mid-to-low-elevation riparian areas. The first sighting of the owl above the Mogollon Rim was in 1929. It was not until the forests of central and northern Arizona changed from the open, park like condition in which they were maintained by native peoples prior to European settlement to dense, closed canopies that the owl began to inhabit them. Furthermore, the association between Mexican spotted owls and "old growth" is, at best, a loose one. Analysis of spotted owl territories has revealed that a very small percentage of those territories (estimated at 15%), consisting only of nest and roost sites, manifest some of the characteristics of "old growth" forests. Ironically, although radical activists claim they seek to prevent the clear cutting of trees, to protect "old growth," their proceedings in support of the Mexican spotted owl have affected millions of acres on which there is presently little or no "old growth," and the management restrictions they advocate may simply fuel the inevitable wildfire that consumes the trees they want to save. By "old growth," most activists really mean big trees; they assume that large trees are old trees. In fact, at a recent Senate hearing on forest health, scientists demonstrated that the size of a tree is not necessarily determined by its age.

Trees grow large in uncrowded forests. Even old trees may be small and weak where they must compete for resources with many other trees. Presently small trees, growing in overcrowded conditions in which they cannot flourish, provide most of the closed canopies deemed important and designated as "critical habitat" for the spotted owl. According to forest health experts, the overcrowding, and resulting competition for moisture and nutrition, susceptibility to mistletoe, bark beetle, and other pests, and fuel loading, has set the stage for massive crown fires that may decimate large tracts of forest that will take generations to recover, at huge economic cost.

Forest inventories indicate that there are many more trees currently on our national forests than there were before Europeans settled the area. In the Coconino National Forest, there are currently 116.8 trees per acre with a breast height diameter of 6" or more, whereas in 1911 there were 16 trees per acre. In the Prescott National Forest there are presently 99.1 such trees per acre, compared with 20.0 per acre in the past. In the Tusayan Ranger District in the Kaibab, there are currently 76.7 trees per acre, compared with 10.7 in the past. Moreover, there are tens of thousands of acres which have much greater tree densities; the research of professors Covington and Moore indicates that average densities of all live stems in the Coconino National Forest were 12.1 trees per acre in past conditions, and 757 trees per acre under current conditions.

The data indicates that there are more "big" trees as well as more small trees. Comparing the numbers of trees 18" or larger in diameter, inventory data show that in the Coconino National Forest, current levels of 8.5 such trees per acre are slightly less than historic levels of 8.7 per acre. In the Prescott National Forest, current levels of 7.0 such trees per acre are almost double historic levels of 4.4 per acre; and in the Tusayan Ranger District on the Kaibab, current levels of 7.7 trees per acre are almost double the historic levels of 3.7 per acre.

Besides a drastic increase in tree densities, current forest conditions can be characterized as having high canopy closures, high fuel accumulations, a lack of low intensity ground fires, significantly reduced water yields, reduction in grasses and forbs, conversion of ponderosa pine type to mixed-conifer type, tree invasions into parks and meadows, all of which contribute to unhealthy and unnatural conditions. In such conditions the forests are more susceptible to insects, disease, stagnation, poor growth, and fire.

Thus, the end product of the bad science applied to justify listing the Mexican spotted owl is not the protection of old growth trees. It is the decline of forest health, and likely destruction of the very trees intended to be saved.

## 2. The Young-Pombo Bill Would Emphasize Recovery. Reduce Bureaucratic Gridlock, and Reduce Opportunities for Abuse

The ESA is both unpopular and unsuccessful because it is being used in a way that was never intended. The ESA was designed to function as a safety net, to catch and save species that had slipped through gaps in other conservation laws. The occasionally draconian enforcement mechanisms intended for use in emergency situations are used as an option of first, rather than last, resort. In consequence, the ESA has made the already unwieldy federal bureaucracy even more cumbersome and unresponsive.

Under the present law, most of the federal resources available for species protection are devoted to compliance with the mandatory provisions and deadlines. The Young-Pombo bill would redress this situation by shifting the emphasis of the law from listing to the development of recovery plans, by providing incentives for conservation rather than inflexible mandates, and by increasing the involvement by states and the private sector in the recovery process.

The ESA's mandatory provisions can be simultaneously onerous, costly, and ineffective. For example, the law sets deadlines for listing, designation of critical habitat, and consultation. However, the sheer volume of research and paperwork that must be done to determine a species' status and complete the listing process, and the lack of funding, combine to assure that these deadlines are seldom met.

Again, the Mexican spotted owl provides an example of the problem. When the statutory deadline for designation of critical habitat had expired, Dr. Silver sued to force the Fish and Wildlife Service to designate critical habitat. In May of 1995, pursuant to a federal district judge's order, and despite a Congressional moratorium on the publication of such a rule, the Fish and Wildlife Service designated 4.5 million acres of forested lands in Arizona and New Mexico as habitat for the owl. In August of 1995, in a different lawsuit by Dr. Silver, the same judge enjoined all timber harvest in 11 million acres of national and tribal forests in those two states.

In recent statements to the press, Dr. Silver has made it plain that his agenda involves "protecting old growth," not protecting the owl. The owl is merely the excuse for the action he seeks. Representatives of the Sierra Club have also admitted that the same objective fueled their efforts to seek protection for the Northern spotted owl in the Pacific Northwest. However, Dr. Silver's refusal to stipulate that the injunction does not affect the cutting of small trees, or activities outside of critical habitat, hint at another agenda: the death of the forest products industry in the Southwest.

The bureaucratic gridlock produced by the ESA's mandatory deadlines and other requirements have afforded self-anointed environmentalists, such as Dr. Silver, opportunities to dictate national priorities and to control the management of millions of acres of land to further their own priorities and agendas. As a result, the ESA has become the means to an end that may have nothing at all to do with saving species from extinction, and everything to do with certain types of activities that some consider "undesirable," such as ranching, mining, timber harvest, and real estate development.

Because there is no requirement that information relied upon as the basis for federal action be peer-reviewed or otherwise determined to be scientifically valid, there is room for considerable mischief. Activists may generate considerable publicity in support of protection for "charismatic megafauna" for political purposes or reasons other than species protection, while they ignore less popular but often more essential species. Species such as the ferruginous cactus pygmy owl, that were never plentiful in the United States, or that are plentiful outside the United States, may nevertheless be listed as endangered based upon rarity, without determining their historic population levels and without understanding the factors (such as climatic conditions) that underlie their rarity.

The record of the ESA reflects this problem. After twenty years, more than 775 plant and animal species had been listed (at the rate of approximately 40 species per year), 500 more were awaiting listing, and an estimated 3,000 were considered to be in possible jeopardy. Yet only 5 species had been recovered and delisted. The Department of Interior estimates that in 20 years 40 species became extinct while waiting for their paperwork to be completed. It is estimated that it will cost \$140 million just to list the 600 species now thought to be in immediate jeopardy; the cost of efforts to recover these species is estimated to be \$5.5 billion. Even after such expenditures, it is likely that more species will be lost than are saved.

### 3. The Young-Pombo Bill Would Better Prioritize Scarce Resources and Balance Federal Priorities

The ESA relies upon the drastic remedy of "deathbed conservation" of individual species rather than the forests and rivers which those species inhabit. The ESA's species-by-species approach ignores the biologically more significant ecosystem (forest) in favor of the species (trees). This approach, which affords each rare species equal treatment, without regard to the cause or consequences of its rarity, is both wasteful and doomed to failure.

All of this activity takes place in almost total ignorance of the process of extinction that is the ESA's principal concern. There is serious debate among scientists as to what actually constitutes a species, and there is great uncertainty as to the validity of popular mass extinction projections. It is often impossible to determine the cause of a species' extinction, or the path to preservation. Species that are truly on their deathbeds are not likely to have sufficient numbers to retain their ecological niche and recover sufficiently to retain evolutionary variety and adapt to changing environmental conditions and random catastrophes. The ESA makes no provision for these possibilities.

The "deathbed conservation" mentality leads to drastic interruptions of the business of federal agencies, often without any demonstrable benefit to a listed species. Again, the Mexican spotted owl affords an example. An injunction issued to "enforce" the ESA has resulted in the interruption of all federal timber harvest in the southwest region, even though only 4.5 million of the 11 million acres of forested lands were designated as critical habitat for the owl, and the designation included all lands presently occupied by the owl or capable of being occupied in the future.

In the case of individual listed species, much effort and expense may be devoted to a process doomed to failure. For example, in Arizona, the Fish and Wildlife Service proposed a rule to "preserve" a population totaling three ferruginous cactus pygmy owls, who presently dwell in desert thorn scrub habitat. It is intuitively obvious that a population of three birds is unlikely to be "brought back" from the brink of extinction, and that recovery efforts for this owl are likely to be as unsuccessful as the plans to recover the masked bobwhite quail.

However, in the interest of protecting the pygmy owl (which incidentally dwells in much greater numbers in Texas and in Mexico) the Fish and Wildlife Service proposed to designate 290 miles of rivers, streams and washes in central and southern Arizona as critical habitat for the species, and suggested that any activities that might affect those riparian habitats including agriculture, ranching, and groundwater pumping for municipal and other uses, be modified or discontinued.

In short, the lives of hundreds of thousands of Arizonans could be affected by a rule to protect three pygmy owls. The direct and indirect economic costs of such a rule could be gigantic. Yet Peter Galvin, of the Southwest Center for Biological Diversity, characterized the ranchers and farmers who testified in opposition to the proposed rule as "selfish people who apparently don't care about anything else but how much money they can make in the next year or two" and "the same people who are trying to turn Arizona into an environmental hell and won't stop until they have the last acre and will gobble up every place of the Sonoran Desert, every creek, pump every river dry." This mentality illustrates much of what is wrong with the present law.

The Young-Pombo bill would require the federal government to take into account all of the factors relevant to species recovery, including the biological significance of a species, and the technical practicality of recovery. It would also balance the objectives of the ESA with other agency objectives.



#### 4. The Young-Pombo Bill Would Require the Federal Government to Count, and Pay, the Costs of Species Protection

One of the most divisive features of the present law is its absolute directive that federal bureaucrats avoid "jeopardy" to listed species, and that species be listed without regard to the economic costs of listing. In a manner reminiscent of the base closure commission, the Secretary of the Interior has been given discretion to wreak economic havoc in the interest of rare species, without the opportunity for public referendum. Such thinking allows the Fish and Wildlife Service to propose designating hundreds of miles of river as habitat for three pygmy owls, and risking catastrophic fires over millions of acres for the spotted owl.

The ESA presently provides only a limited exemption process for projects that jeopardize a listed species. Nonfederal persons effectively may be forced to ransom their projects by donating land or funds, or may spend literally millions of dollars attempting to satisfy concerns with no assurance that they will ultimately be granted leave to proceed with their project. If a landowner proceeds with a project that modifies "critical habitat," he or she may be criminally prosecuted for unlawfully "taking" a listed species. Thus, instead of encouraging landowners to preserve rare species that may inhabit their lands, the ESA has led to the preemptive slaughter of listed species. Small wonder that in the Pacific Northwest, some landowners have elected to employ the "3-S" alternative for rare species: "shoot, shovel, and shut up."

Although costs are theoretically considered in the context of designating critical habitat, the bureaucrats on a mission to protect species "at all costs" interpret the ESA in a way that permits them to trivialize or disregard economic impacts and to shift much of the economic burden of rare species protection to nonfederal landowners. Because this economic havoc is wrought on a species-by-species basis, its effects are usually local, and in most cases those who suffer the consequences can be silenced by the threat of criminal prosecution, or safely ignored, labeled "selfish" and "short-sighted."

The refusal to consider costs is not objectionable merely because it results in the tyranny of the majority over the unfortunate few whose lands are habitat for listed species. It prevents the government from prioritizing its efforts on behalf of species, and allocating scarce resources where they will do the most good.

The Young-Pombo bill would require the Secretary of the Interior to take economic costs and effects into account, and to prioritize efforts to conserve species, so that scarce dollars can be devoted to efforts that will do the most good. The bill would also require the federal government to share in the costs of the measures it mandates, and to compensate nonfederal persons for the costs they bear in the interest of species protection. Not only will such measures encourage realistic setting of priorities, they will restore a measure of fairness to the law, and in so doing will reduce public opposition to species protection measures.

### 5. The Young-Pombo Bill Would Reduce Reliance on Inflexible Mandates and Encourage Conservation Through Incentives

The Young-Pombo bill would shift the emphasis of the ESA from cumbersome mandates to positive incentives for conservation. Rather than depending upon coercion and threats of prosecution to compel private landowners to bear the cost of maintaining biodiversity, the bill directs that lands needed to implement conservation programs be acquired by the federal government, through purchase, gift, or exchange. Instead of using the might of the federal government to protect species at the expense of selected individuals or industries who may be put out of business, or whose private property is converted to a federal wildlife preserve, the law would more fairly apportion the costs of protecting our national heritage according to federal priorities by providing for federal cost-sharing, compensation for the use of private property, and positive incentives for nonfederal actions that conserves species.

### 6. The Young-Pombo Would Place Greater Emphasis on Biodiversity

Scientists have identified and taxonomically classified approximately 1.4 million species; it is estimated that 30 million species remain undescribed. Despite total ignorance of millions of species, and relative ignorance of all but a few of the classified species, as well as the simple and complex biological relationships that affect and are affected by those species, Congress simply assumed that the ESA's fragmented, piecemeal efforts in behalf of selected species would somehow result in the perpetuation of biodiversity.

In fact, well-intended efforts to preserve one species may damage another species, and possibly affect an entire ecosystem. For example, protected mountain goats in Olympic National Park are reportedly devouring rare and endangered plants; protected sea lions devastate steelhead and other fish populations; goshawks prey on spotted owls. On a larger scale, the issues become more complex and potentially more devastating. The Florida Everglades is threatened by lack of water, but the release of water from nearby impoundments is prohibited because the impounded water is habitat for the endangered snail kite. In Arizona and New Mexico, millions of acres of forested land have recently been designated as critical habitat for the Mexican spotted owl; the management restrictions intended to benefit the owl (preserving an unnaturally dense canopy and fuel loading) are likely to result in catastrophic wildfires, and the situation is exacerbated by a federal court injunction that prohibits any timber harvest in 11 million acres of national forest land. One side effect of such management restrictions may be the death of the timber industry in the region, and with it the loss of a tool essential to maintenance of forest health.

The ESA presently provides no mechanism by which such conflicts may be resolved, or conservation priorities established to direct resources and attention where they can do the most good.

To balance the ESA's present emphasis upon selected species in trouble, the Young-Pombo bill would establish a Federal Biological Diversity Reserve. Each unit of the reserve shall be managed for the objective of preserving, maintaining, or enhancing biological diversity. This network of reserves should both enhance protection of species and reduce the burdens now imposed on nonfederal landowners.

The Endangered Species Act must be reformed, and soon. Instead of assuming that the needs of nonhuman species can only be protected by absolute, inflexible federal mandates, Congress should allow states and private citizens to make responsible, appropriate decisions that balance costs and benefits, and take human needs into account.

## EXCERPTS OF WITNESS TESTIMONY FROM THE ENDANGERED SPECIES TASK FORCE OVERSIGHT HEARINGS

"...[Encourage] large landowners to enter into voluntary agreements to manage their land to protect species, as a substitute for regulation..."

"Provide greater flexibility in the conservation of threatened species as originally intended by the Act..."

"Provide certainty for landowners who develop habitat conservation plans or improve habitat for endangered species on their lands that their actions will not be subject to further restrictions under the ESA..."

"...must make the Act more workable, efficient, and less costly to implement for... property owners..."

"The reauthorization must reduce administration, economic, and regulatory burden on small landowners while providing greater incentives to conserve species."

**George T. Frampton, Jr., Assistant Secretary**  
**May 18, 1995 Endangered Species Task Force Oversight Hearing**  
**on the Endangered Species Act**

"Critical Habitat should be limited to the area where there is a realistic possibility of recovering the species rather than requiring that the entire historic range be included. This often jeopardizes existing or future private land uses."

**Thomas A. Kourlis, Commissioner, Colorado Department of**  
**Agriculture**  
**May 25, 1995 Endangered Species Task Force Oversight Hearing on**  
**the Endangered Species Act**

"The Endangered Species Act has many problems..."

**Patrick Kangas, Natural Resources Management Program - University**  
**of Maryland**  
**May 18, 1995 Endangered Species Task Force Oversight Hearing on**  
**the Endangered Species Act**

"We believe that the ESA can be improved to benefit of both wildlife and landowners."

"...making the [Habitat Conservation Plan] more user friendly by providing certainty to landowners and reducing the time and cost necessary to complete documentation."

"Clarify the responsibility of private landowners with respect to 'take'."

**Nicholas Wheeler, Ph.D., Senior Scientist, Taxol Program,  
Weyerhaeuser Company  
May 25, 1995 Endangered Species Task Force Oversight Hearing on  
the Endangered Species Act**

"The... ESA must be an ENABLING Act, opening doors of opportunity and marshalling latent goodwill that was stifled by the preceding act."

"We must put money into carrots not sticks. People respond to incentives. For instance, ill-conceived tax structures drive rational people to do socially undesirable acts."

**Dr. David G. Cameron, Retired Professor of Biology and Genetics -  
Montana State University  
May 25, 1995 Endangered Species Task Force Oversight Hearing on  
the Endangered Species Act**

"Congress should... focus on the ways to improve the ESA so it works better for people..."

**Steven N. Moyer, Government Affairs Director of Trout Unlimited  
May 18, 1995 Endangered Species Task Force Oversight Hearing on  
the Endangered Species Act**

"In my experience, the Endangered Species Act as implemented in Riverside County is a disaster. It is a disaster not only for the people who have lost their homes and the use of their land, but also for the species themselves."

"Thousands of... landowners... are taking... severe... measures to protect themselves. These kinds of unfortunate actions are the result of the perverse incentives inherent in the Endangered Species Act."

"Do we really want this to be the legacy of the Endangered Species Act, where people continue to sterilize their land and destroy wildlife habitat for no other reason than the existence of this law?"

"...The Grassroots ESA Coalition advocates replacing the regulatory scheme of the current Act with a wholly voluntary, incentive based program for private lands."

Dennis Hollingsworth, Grassroots ESA Coalition  
 May 18, 1995 Endangered Species Task Force Oversight Hearing on  
 the Endangered Species Act

"We seek to provide workable procedures and positive incentives in the Endangered Species Act which promote conservation of wildlife in a way that considers economic factors and respects the rights of private property owners..."

"Frankly, this law [the ESA] is broken and does not work."

"At its operating premise, the Endangered Species Act mandates protection of the species to the point of its recovery, without regard to the impact on the rest of society."

"...offending characteristics [of the Act]... include: disincentives for landowners to manage for species recovery; no recognition to costs to landowners or to society; no workable delisting mechanism; indifference, if not contempt, for the rights of property owners; and cavalier use of science."

"Private landowners should be provided incentives to work cooperatively with the government to protect listed species."

W. Henson Moore, President and CEO - American Forest and Paper  
 Association  
 May 18, 1995 Endangered Species Task Force Oversight Hearing on  
 the Endangered Species Act

"Provide incentives for people to actively help conserve species. ... The ESA [currently] provides disincentives in the form of endless red-tape and permits that stalemate independent initiatives to assist species."

"For many, the best incentive to conserve species is regulatory certainty."

"We urge Congress to reduce direct regulation of private property, increase incentives for such landowners and to live up to the responsibility of compensating property owners for lost use and value of land."

The Honorable Glenn English, Vice Chairman of the National  
 Endangered Species Act Reform Coalition  
 May 18, 1995 Endangered Species Task Force Oversight Hearing on  
 the Endangered Species Act

"... the history of the Endangered Species Act is in need of a complete overhaul. The original goal to save species from becoming extinct had instead fostered bitter disputes between species preservation and the economic and social well-being of rural communities."

"We are told that there is a "public interest" in protect these species, and that their survival will benefit all of us. Yet private landowners are told to bear the entire costs."

"The Act should provide positive incentives to enhance recovery of listed species rather than using solely negative enforcement policies."

"The Act should provide strict liability for damages caused to the person and property from listed species."

**Dean Kleckner, President - The American Farm Bureau Federation  
May 18, 1995 Endangered Species Task Force Oversight Hearings on  
the Endangered Species Act**

"... Because the Endangered Species Act requires private property owners to provide thier property for the benefit of the public, they should receive just compensation..."

**Bruce Smith, National Association of Home Builders  
May 18, 1995 Endangered Species Task Force Oversight Hearings on  
the Endangered Species Act**

"The incentives are wrong here. If I have a rare metal on my property, its value goes up. But if a rare bird occupies the land, its value disappears. We've got to turn it around to make the landowner want to have the bird on his property."

**Sam Hamilton, Former Fish and Wildlife Service Administrator for  
the State of Texas (taken from witness testimony)**

"Strong incentives for conservation on private land must be created."

**Michael Bean, Environmental Defense Fund  
(taken from witness testimony)**

"...I have dedicated the bulk of my time and effort to advancing ESA reform and a deeper appreciation for the economic and ecological values protected by private property rights."

"That the ESA has created perverse incentives is well documented."

"Not until the federal government respects the rights of private landowners and halts the regulation of private property will the ESA be a sustainable law."

"... in many cases landowners will need no other incentive that the assurance that they will not be penalized for having such species on their land. In other case, positive incentives will be needed."

**Ike C. Sugg, Fellow in Wildlife and Land-Use Policy - Competitive  
Enterprise Institute  
May 18, 1995 Endangered Species Task Force Oversight Hearings on  
the Endangered Species Act**

"Provide incentives to private landowners"

"Another way to provide incentives for landowners is to offer remuneration for conservation actions over and above those required by law."

"Provide Certainty to private landowners"

"By making thoughtful improvements to ESA, we can enable private landowners to take a greater conservation role, and thereby provide for both species conservation and sustainable development -- for the benefit of each of us and generations to come."

**John F. Kostyack, Counsel - National Wildlife Federation  
May 18, 1995 Endangered Species Task Force Oversight Hearings on  
the Endangered Species Act**

"Recognize rights of private landowners and society's responsibility to mitigate costs for species protection on private land."

"Create incentives for landowners to conserve species."

"Private landowners who cede control of thier lands to society in the name of preserving threatened or endangered species should receive just compensation."

**Dr. Gene Wood, The Society of American Foresters  
May 25, 1995 Endangered Species Task Force Oversight Hearings on  
the Endangered Species Act**

"The estimated costs in recovery plans do not reflect those costs imposed upon the private sector by implementation of the ESA."

Robert E. Gordon, Jr. and James R. Streeter, National Wilderness Institute

"The ESA fails to adequately address and assess complex biological and taxonomic issues"

W. Mike Howell, Ph.D., Professor of Biology, Sanford University  
May 25, 1995 Endangered Species Task Force Oversight Hearings on the Endangered Species Act

"Industry and state and local economies would benefit not only from having species preservation and recovery, but also from having to shoulder the financial burden of recovery plan implementation."

Terry D. Richardson, Ph.D., Assistant Professor of Biology, and Paul Yokley, Jr., Ph.D., Emeritus Professor of Biology, University of North Alabama  
May 25, 1995 Endangered Species Task Force Oversight Hearing on the Endangered Species Act

"the fear of losing private property rights and the costly... problems... have all but halted the economic growth set forth in out original feasibility studies."

Mary Wells, General Manager of an Agriculture Water District  
April 28, 1995 Endangered Species Task Force Field Hearing on The Endangered Species Act  
Stockton, California

"...the [ESA] should be reformed."

Mark V. Connolly and Matthew J. Connolly, CPA, Connolly Ranch, Inc.  
April 25, 1995 Endangered Species Task Force Field Hearing on the Endangered Species Act  
Stockton, California



"Although incentives are useful to encourage habitat production under some circumstances, the best incentive for habitat production on our ranches is generally for government to intrude least into private efforts."

**Dan Byrne, Robert A. Byrne Co.**  
**April 28, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Stockton, California**

"Protect private property rights and require full compensation to the owner of the property whenever federal regulators restrict the use of property or devalue property."

"Family Water Alliance urges the House to reevaluate and reform the Endangered Species Act, to restore the balance that is necessary if agriculture is to remain viable and private property rights to remain protected by the Constitution."

**Marion Mathis, Family Water Alliance**  
**April 28, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Stockton, California**

"This Act has been the untouchable of untouchables for too long."

"It is clearly time to discard the rhetoric, loosen the gridlock, and work together for common sense reform on the Endangered Species Act."

"The Act must clearly allow reasonable actions to protect private property, either by exemption or by a broadly applicable general permit."

"Farmlands are being taken without compensation, to serve as free critical habitat... this is clearly a violation the landowner's constitutional rights."

**Bob L. Vice, President, California Farm Bureau Federation**  
**April 28, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Stockton, California**

"The ESA has been a noble experiment... but to date, the Act has met with very little success."

"The ESA is so inflexible and citizen suit provisions so generous that ESA litigation controls administration and enforcement of the Act. This must be changed."

"A system providing private property owners positive economic incentives to provide species habitat must be developed to avoid (a) the continued failure of the Act and (b) the Act's disregard and nonchalance toward private property rights."

"Congress needs to keep in mind what the United States Constitution's Fifth Amendment says: 'No person shall be... deprived to life, liberty or property without due process of law...nor shall private property be taken for public use, without compensation.'"

**Robin L. Rivett, Pacific Legal Foundation**  
**April 28, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Stockton, California**

"Citizens across the state are finding out that the ESA has the capability of crippling whole communities, limiting the use of a person's private property, and even limiting the amount of water that can be distributed throughout California."

"Remove bias from the listing process and other decisions... improve notice and participation... protect against the uncompensated taking of property"

"Provisions of the ESA should be amended expressly to reaffirm Fifth Amendment protections against the uncompensated taking of private property and water and mineral rights, to support the establishment of voluntary rental agreements with property owners to protect habitat, and to allow state and local public agencies (such as water agencies) to sue on behalf of thier customers for the diminution of value in property because of proscriptions developed under the terms of the ESA."

**Clifford H. Moriyama, Director of Agriculture and Resources,**  
**California Chamber of Commerce**  
**April 28, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Stockton, California**

"Build partnerships with private landowners--Provide financial incentives and technical assistance for private landowners to plan for the conservation of listed and candidate species on their property. Remove disincentives that preclude sound conservation practices."

**Daniel Taylor, Western Regional Representative, National Audubon**  
**Society**  
**April 28, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Stockton, California**

"The Act should be modified so that Private Property Owners will freely encourage wildlife on thier land without fear of government intrusion."

"In San Bernardino County, a new medial facility had to mitigate for the presence of Eight Delhi Sand Flies. The cost to the public, \$3,300,000. \$413,000 per fly!"

Leroy Ornellas, Dairy Farmer -- Tracy, California  
 April 28, 1995 Endangered Species Task Force Field Hearing on the  
 Endangered Species Act  
 Stockton, California

"...two serious flaws of the Act which need to be addressed;  
 economic impact of listings and property rights."

Anthony Souza, Realtor  
 April 28, 1995 Endangered Species Task Force Field Hearing on the  
 Endangered Species Act  
 Stockton, California

"Appropriate increased funding to reimburse the private sector for independent studies of assessments of species proposed for listing or critical habitat designation."

Peter G. Giampaoli, President, Epick Homes, Inc.  
 April 28, 1995 Endangered Species Task Force Field Hearing on the  
 Endangered Species Act  
 Stockton, California

"Landowners should be encouraged to create and maintain habitat for listed and candidate species through tax credits, hold harmless agreements, and other incentives. If society values the preservation of habitat for declining species on private lands, it should be willing to reward landowners for protecting these resources. Currently, landowners are penalized for damaging sensitive habitats, but the ESA offers no direct incentives for preserving or enhancing these habitats on private lands."

Edward C. Beedy, Ph.D., Wildlife Biologist  
 April 28, 1995 Endangered Species Task Force Field Hearing on the  
 Endangered Species Act  
 Stockton, California

"The Endangered Species Act (ESA) has impacted California agriculture in terms of private property use, habitat for endangered or threatened species, reduced quantities of surface

water for urban and agriculture use, increased cost of surface water supplies, and has created serious limitations with respect to development of any additional supplies of water in California."

**Mark W. Burrell, President, The Westmark Group  
April 17, 1995 Endangered Species Task Force Field Hearings on  
the Endangered Species Act  
Bakersfield, California**

"Instead of preserving America's rich natural heritage, the state and federal governments are using the Act to dictate private land use, to extort land and money from property owners and to drive the cost of many local public works to prohibitive extremes. The agencies which apply and enforce the Act have almost become a law unto themselves, assuming powers never intended by the Act and, in my view, never granted by the Constitution. In very few cases are any endangered species recovering. Humans, however, are reeling from the impact."

"The Act is adding immensely to the cost of public projects."

"If preserving endangered species is to remain a goal of the federal government, the federal government, not the private landowner, ought to be willing to devote its landholdings and funds to species protection."

"Government must pay property owners when their land is condemned for other public purposes such as highways or military bases. Why should the Endangered Species Act be an exception?"

**Kenneth W. Peterson, Chairman, Kern County Board of Supervisors  
April 17, 1995 Endangered Species Task Force Field Hearing on the  
Endangered Species Act  
Bakersfield, California**

"This Act has to be changed to allow for property protection, to provide incentives instead of penalties to preserve endangered species habitat on private land, and to give authority back to local government over local affairs."

**Greg Gallion, President, Coalition for Property Rights  
April 17, 1995 Endangered Species Task Force Field Hearing on the  
Endangered Species Act  
Bakersfield, California**

"Provisions must be incorporated to protest against the uncompensated taking of private property."

**John Lemley, Holmes Western Oil Corporation**  
**April 17, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Bakersfield, California**

"Many Kern County residents exhibit outrage and frustration at the manner in which the federal government is using this Act to dictate private land use, extort land and money from private property owners and create an environment of distrust and scientific suspicion."

"Many farmers are fearful that endangered species will recolonize lands that have come out of agricultural production due to changing agricultural practices or lost water entitlement. As a result, they keep fallow fields plowed which can aggravate airborne dust problems and cause unnecessary fuel costs."

"Provisions must be incorporated to address the uncompensated taking of private property."

**Ted James, Director, Kern County Planning Department**  
**April 17, 1995 Endangered Species Task Force Field Hearings on**  
**the Endangered Species Act**  
**Bakersfield, California**

"The Endangered Species Act must be reformed and modified to address the concerns of private property owners."

"Scientific data and study of endangered species must be thoroughly peer reviewed to provide assurance of accuracy."

**Dennis Iverson, Utah Farm Bureau Federation**  
**April 17, 1995 Endangered Species Task Force Field Hearings on**  
**the Endangered Species Act**  
**Bakersfield, California**

"... how seriously distorted the federal Endangered Species Act (ESA) has become. A well-intentioned statute has come to be administered in a very punitive way. The ESA of 1995 would not be recognizable to its creators."

"Congress should change the law so that federal ESA agencies are required to justify their actions with good science and to conduct their review and decision process openly, ethically, and with adequate public access and comment. The public deserves to know the true costs of the Endangered Species Act."

"The overall impact of the unreasonable restrictions imposed under the Endangered Species Act has been an insidious, unseen, and yet substantial regulatory tax on the economy of Kern County and California."

**Thomas N. Clark, Kern County Water Agency**  
**April 17, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Bakersfield, California**

"Create an orderly process that would protect property values and relieve individual properties as quickly as possible."

**Kay S. Cenicerros, Riverside County Board of Supervisors**  
**April 26, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Riverside, California**

"Only substantive changed to the ESA through significant incentives and respect for private property rights, will result in effective conservation, and ultimately, greater preservation for all species."

"If private property is devalued as a result of federal regulations regarding endangered species, the landowner should receive compensation."

**Scott E. Woodward, Bramalea California, Inc.**  
**April 26, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Riverside, California**

"We need to avoid the 'endangered species-of-the-month club' approach"

"The ESA should encourage plans that are built on solid and strong biology and reasonably available science, which also integrate local economic and land use considerations."

**Michael McLaughlin, San Diego Association of Governments**  
**April 26, 1995 Endangered Species Task Force Field Hearing on the**  
**Endangered Species Act**  
**Riverside, California**

TESTIMONY OF GEORGE T. FRAMPTON, JR., ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE RESOURCES COMMITTEE REGARDING H.R. 2275, THE ENDANGERED SPECIES CONSERVATION AND MANAGEMENT ACT OF 1995

September 20, 1995

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Thank you, Mr. Chairman, for providing the Department of the Interior the opportunity to testify on H.R. 2275, the Endangered Species Conservation and Management Act of 1995.

While we recognize the efforts of the Task Force and this Committee to understand the concerns that have been expressed with the Endangered Species Act, the Administration is profoundly disturbed by the legislation developed and introduced. It not only undermines the scientific foundation of the ESA and abandons this country's support for the conservation of endangered plants and animals, but its passage would result in a process layered with costly bureaucracy while providing virtually no protection for wildlife. The Endangered Species Act embodies values important to all Americans and we do not believe that the American people will support the extreme measures taken in this bill that effectively repeal the Act. Nor does the Administration believe that this legislation brings us any closer to our mutual goal of reauthorization of the Act. Accordingly, the Secretary of the Interior would recommend that the President veto the bill if it is presented to him.

The Endangered Species Act is one of the country's most enduring, innovative and important environmental laws and has placed the United States in the forefront of species conservation. As it was passed twenty years ago and subsequently amended, its core purposes are to conserve endangered and threatened species and the ecosystems on which they depend.

Recognizing that the Act needed to be reformed, this Administration has taken major steps towards improving how the Act is implemented by working with state and local governments, other federal agencies and private landowners, both large and small. We have found flexibility in the Act where critics have said it didn't exist and have created new tools that address landowner concerns.

In order to achieve necessary reform of the Act we have provided this Committee with the Administration's 10-point plan, which was announced earlier this year by Secretary Babbitt and the Department of Commerce's Undersecretary Baker. The plan describes the administrative changes we have begun to implement, and recommends legislative changes that Congress could undertake to make the Act work better. The objectives of the plan are based on a common sense approach to the Act and a concerted effort to solve legitimate problems while preserving the core goal of protecting our nation's priceless biological heritage. These objectives include, but are not limited to: expanding the role of states; reducing socio-economic effects of listing and recovery; ensuring that the best available peer-reviewed science is the basis for all ESA decision-making; and increasing cooperation among federal agencies. H.R. 2275 does not follow any such constructive paths, nor does it adopt the approach taken by groups such as the Western Governor's Association (WGA) and the Keystone Group to develop consensus proposals to reauthorize the Act in a biologically sound manner. On the contrary, H.R. 2275 subverts each of the positive principles upon which any workable Endangered Species Act must be built.



### ABANDONS SOUND SCIENCE

A fundamental flaw of the H.R. 2275 is its dramatic departure from the use of sound science. It ignores and in fact, seems intended to repudiate the findings and recommendations of the recently released National Academy of Science (NAS) report on the Endangered Species Act. The NAS found that habitat protection is essential to conserve and recover species and to avoid the need to list species in the first place. H.R. 2275 clearly abandons protection of species by abandoning habitat protection. The legislation changes the Act so that its purpose is no longer to conserve the "ecosystems" that endangered and threatened species depend upon.

Most significantly, H.R. 2275 redefines the term "harm" to include only direct action against an endangered species that actually kills or injures individuals of the species. This change is intended to overturn a recent decision by the Supreme Court in the Sweet Home case that it is reasonable to conclude that "harm" includes destruction of habitat. Modification or destruction of habitat upon which a species depends would not constitute "harm" and restrictions on habitat destruction, the primary cause of endangerment, would be lifted. This change alone would fundamentally imperil many threatened and endangered species, and warrants our strong opposition to the bill.

The legislation further separates the concept of conservation of species and the need for habitat by placing an increased emphasis on the use of captive propagation to conserve species. The Administration does not disagree with the utility of captive propagation, but it

should be used as a tool of last resort in the recovery process. American zoos and aquariums are wonderful places and play a vital role in providing a window to the rich heritage of North American wildlife; they should not, however, become museums for species of wildlife and fish that have been wiped off the American landscape. The NAS report clearly detailed the problems associated with captive propagation such as inbreeding, disease and loss of genetic diversity and found that this tool is not a substitute for the conservation of species in their native habitat. In addition, the costs of captive propagation are prohibitively high and, therefore, preclude its use except in extreme cases. The goal of our efforts must remain the recovery of species in their native ecosystems.

H.R. 2275 would also force us to abandon our commitment to protecting distinct populations of species such as the gray wolf, the grizzly bear, and bald eagle because they exist in Canada and Mexico, unless Congress designated these as being in the national interest. This once again ignores the NAS report which found that protection for distinct populations should be expanded and encouraged to ensure long-term viability of species. It replaces science with politics.

Similarly, the bill rejects past findings of the National Marine Fisheries Service (NMFS), the National Academy of Sciences and other experts that shrimp fishing without turtle excluder devices poses a serious threat to sea turtles by granting an exemption from take restrictions. Young turtles need to spend years in their marine environment before they mature enough to reproduce. During this time lethal taking would occur. In fact, it is estimated that 55,000

sea turtles drowned annually in shrimp trawls in U.S. waters before TEDS were required. This exemption and other provisions in the bill exempting certain non-Federal activities in the marine environment from ESA protection and puts all protected marine species including salmon, manatees, whales, seals, and sea lions at substantial risk as well.

The Administration strongly supports the use of peer review. However, the approach to peer review taken in H.R. 2275 illustrates that the authors are more interested in "good politics" than they are in "good science." In the name of objectivity, the bill prohibits peer reviewers from being employed or under contract to the Secretary of Interior or Commerce, but does not prohibit a consultant to an industrial concern with a direct financial interest in the outcome of an action from being a peer reviewer. Under H.R. 2275, Rachel Carson (a FWS employee) would have been "black-listed" from peer reviewing the bald eagle listing but scientists from the chemical companies manufacturing DDT would have been welcomed at the table.

The Administration opposes the intent of this bill in section 301(b)(4) to eliminate the distinct role of the Department of Commerce, National Marine Fisheries Service (NMFS) in administering the ESA for species under the jurisdiction of the Secretary of Commerce. NMFS is the premier fisheries science and management organization in the world. Since its inception 25 years ago, NMFS has managed over 300 marine and anadromous species that inhabit two million square miles of ocean. Based on data gathered from scientific investigations, these species are managed in a sustainable manner to ensure their protection.

It does not make sense to ignore or duplicate the efforts of NMFS.

#### **ABANDONS GOAL OF RECOVERY**

One of our greatest objections to the bill is that it abandons the goal of species recovery, which has been the touchstone of the ESA since its creation. Instead, it establishes a cumbersome process by which a conservation objective would be established for a species, which could reject recovery as its goal and only prohibit direct killing of an individual member of the species. These latter species would not even be protected from incidental take. For those species who happen to enjoy a higher conservation objective, a conservation plan would be developed through a protracted and lengthy process.

But even these species are put at great peril by the fact that during the lengthy interim period between a listing and development of a conservation plan, the species would have virtually no protection. Federal agencies and private landowners would have an incentive to accelerate actions harmful to the species, especially to the habitat of the species, during this critical interim period. This could move the species further toward extinction and limit the options that may be available to the team organized to develop the conservation plan.

#### **ABANDONS SPECIES PROTECTION ON PRIVATE LANDS**

The Administration is sensitive to the concerns of private landowners about the impact of the ESA on their lives. In order to address those concerns and alleviate them, the Department has worked diligently with landowners on the development of Habitat Conservation Plans

HCPs) and voluntary agreements, and has put into effect a "no surprises" policy and a "safe harbor" policy. It is also why we have proposed a new regulation to exempt small landowners from select requirements of the Act and why we have emphasized proactive species conservation on Federal lands. These efforts are a work in progress to make the ESA more user-friendly and we are seeing new successes and innovations almost daily.

H.R. 2275 completely undermines the efforts the Administration has made to date and would fundamentally undercut the ability to protect species on private lands. Most significantly, it creates a complex and sweeping system for compensation of private landowners. Not only do these provisions go far beyond any standard for "taking" that has been established by the Courts, they even go far beyond other compensation bills before Congress. Claims for compensation could be based on a laundry list of agency actions which would make it virtually impossible for the Department to administer the Act. Extraordinary time and effort would be required to assess when and how this provision would be implemented. Worse still, it would be impossible for the Fish and Wildlife Service to know how to plan its budget for implementation of the Act since compensation would be paid out of the annual appropriations of the agency. Predictably, this would hinder agency efforts to protect species even when necessary to keep a species from going extinct.

While H.R. 2275 provides for the development of cooperative management agreements under section 6 for States, groups of States, local governments and any non-federal persons for the management of listed species, these agreements represent only a shell of the protection that

species on private lands currently receive and need to receive in the future. Specifically, these agreements would not even apply to private land without the consent of the landowner. In addition, the bill does away with HCPs and replaces them with a species conservation plan that requires the applicant to only take those steps that can reasonably and economically be taken to minimize impacts.

#### REDUCED SPECIES PROTECTION ON FEDERAL LANDS

After granting exemptions for private lands, the bill gives false hope that species will be conserved on public lands. The bill creates National Biological Diversity Reserves, giving the casual observer the sense that the bill is creating "new" habitat for species. In reality, the bill actually shrinks the federal lands which may be used to protect species to those which are in existing national parks, national wildlife refuges, wilderness areas, and wild and scenic rivers, where protection already exists for species.

State and private lands would be included only with the consent of the Governor or the landowner and could be removed at either's request. In addition, designation of land in a Reserve would not affect any existing interest in land, water right or property right. In other words, it would mean very little and we view it as simply an attempt to give the bill a cosmetic makeover.

Under H.R. 2275, millions of acres of lands managed by the Bureau of Land Management (BLM) and U.S. Forest Service would cease to serve as critical habitat if that purpose

conflicted with some other mission of the federal agency such as mining, grazing or timber harvesting. This would be a huge step backward in Federal leadership in the conservation of fish and wildlife resources.

This bill's narrowing of protection on Federal lands is made worse by other provisions of the bill that allow Federal agencies to do less than current law requires to conserve species and to put it off until a later time. First, the bill eliminates the current requirement that Federal agencies use their authorities to conserve listed species. This alone will substantially reduce our ability to recover species since in most cases the use of laws and authorities other than the ESA is critical to a comprehensive recovery effort for many listed species. As importantly, the use of these authorities, such as the Clean Water Act, can be critical to the avoidance of the need to list species. This provision shows the true color of the bill because it essentially relegates endangered species conservation to the back of the bus in terms of national priorities.

Under H.R. 2275, federal agencies get to decide for themselves if their mission conflicts with the ESA. They decide for themselves if their activities are consistent with a conservation plan for a species and therefore, are exempt from consultation under section 7. Even if it is determined that consultation applies, the bill substantially weakens the regulatory threshold by requiring a finding that the activity will "significantly diminish the likelihood of survival of the entire species." Not only could this standard be met if a few species exist somewhere in a zoo, it would allow many species to slip toward extinction because many "insignificant"

impacts would only reach the new threshold if they were viewed cumulatively.

Worse still, during the critical interim period under this bill between the listing of a species and the finalization of a species conservation plan, no Federal agency would have to consult on activities affecting that species at all. This is a powerful disincentive for these agencies to take steps to conserve a listed species or, for that matter, to facilitate the completion of a conservation plan.

In addition, the bill imposes time constraints on the Department for completion of consultation while expanding the number of people participating in consultation and imposing new procedures and considerations that would make the deadline nearly if not totally impossible to meet. The bill provides that if the Department fails to meet the deadline, the federal action agency is deemed to have met the requirements of section 7, regardless of the adverse impact the agency action may have on the continued existence of a species. Needless to say, this provision creates an incentive for delay and manipulation of the process to avoid timely completion of consultations.

By reducing the responsibilities of both private landowners and federal agencies, this legislation takes two giant steps backward in our ability and commitment to conserve species.

#### **REDUCED PROTECTION FOR FOREIGN SPECIES**

In regard to international issues, H.R. 2275 prevents the U.S. from implementing effectively



the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and severely hampers our ability to protect species like panda bears, African elephants and Siberian tigers. The bill would limit the U.S. efforts to implement CITES to those steps which are "practicable" and prevent the listing of foreign species which are already included in the CITES Appendices unless a determination is made that CITES is inadequate. H.R. 2275 grants any nation a veto over our decisions about the listing of a foreign species located in that nation. The only way the veto can be overridden is by executive order of the President. We cannot imagine why the Congress would overturn our responsibilities to conserve these species due to the whim of a country which may be the principle cause of its decline.

H.R. 2275 also prevents the U.S. from implementing CITES resolutions and notifications even if they were unanimously adopted by all other CITES parties and were essential to address an emergency situation, until a lengthy and bureaucratic regulatory process is completed. These limitations would severely curtail efforts to protect foreign species from illegal trade within the United States. H.R. 2275 dramatically reduces the threshold to obtain both public display permits and import permits. Under this legislation we would be required to allow the import of the giant panda for anyone who promised to put them on public display and pass out leaflets about the ecology and conservation of the species, even if the animals were removed from the wild in a harmful manner and there was no scientific or conservation merit to the activity. The bill also would require that all permits be issued for a minimum of six years, even though CITES limits the validity of export permits to only six months. The

bottom line is that it would reduce the international leadership role of the U.S. in the conservation of species and create new loopholes for illegal trade in these species.

### A BETTER APPROACH

Mr. Chairman, we know there are better means of protecting biodiversity than the methods laid out in this legislation. We renew our request that the Committee review and consider the recommendations in our previous testimony and our March 6, 1995, package of administrative and suggested legislative reforms to improve the ESA. In criticizing H.R. 2275 the Administration is not indicating that we accept the status quo. Quite the contrary, we are dedicated to improving the Act. The Administration, however, is not willing to sanction a repeal of the Act and an abrogation of our responsibilities to future generations to leave this planet and its species in better condition than we found them.

Our suggested reforms address some of the persistent criticisms associated with the way the Endangered Species Act is implemented and the conflicts that have surrounded the Federal government's attempts to protect threatened and endangered species over the past several years. These reforms are intended to minimize the impact of the Act on private landowners, particularly small landowners, and provide them with more certainty on how they can comply with the Endangered Species Act when a species is listed. These reforms propose new partnerships with State, tribal, and local governments. These reforms address concerns about the quality of the science that is used when implementing the Endangered Species Act. Finally, these suggested administrative and legislative reforms are designed to improve the

process of recovering threatened and endangered species and enlist the participation of a broader array of individuals to help develop these recovery plans.

I would also suggest that the Committee need only to look at proposals like those being circulated by groups such as the Western Governor's Association (WGA) and the Keystone Center to find a constructive path to reauthorization. These two organizations have demonstrated a commitment to work with a variety of interests to formulate real solutions to real problems.

The WGA, spent several months working to craft a proposal that reauthorizes and improves the Act while retaining the underlying and crucial components of science and habitat protection. WGA's proposal recognizes the important role that States have to play in the conservation of species and the need for landowners to have certainty. The WGA proposal expands partnership opportunities with the States and allows them to take the lead for the conservation of species through state-initiated conservation plans.

The WGA proposal also advocates enhanced fairness and increased certainty for private landowners by reforming the HCP process and providing a policy similar to our "no surprises" policy by exempting landowners who participate in these plans from being asked to do more, even if a species covered by the plan is subsequently listed. It encourages voluntary agreements by private landowners to conserve species by creating a mechanism similar to our "safe harbor" policy. In addition, WGA's proposal provides enhanced flexibility for

threatened species conservation and incentives for species conservation.

The Keystone Group brought a wide array of interests together to develop a set of regulatory and economic incentives that would reward and encourage conservation by private landowners. The Administration views collaborative efforts such as these as a solid foundation for reauthorization of the Endangered Species Act. In both cases, improvements to the ESA are proposed in areas where the Act is currently being criticized without gutting the protections the Act affords to both species and their habitats.

I will reiterate that the Administration is committed to working with the Congress to improve and reauthorize this Act. However, in the Secretary's opinion, H.R. 2275 does nothing more than further polarize the issue of ESA reauthorization while undermining the essential goals the Act. Based on the compensation provisions alone, which are worse than those in other bills the Secretary has recommended that the President veto, and without even considering the fact that this bill effectively repeals the Endangered Species Act, one of our most important wildlife and habitat protection laws of the last quarter century, it is clear that the Secretary will recommend that the President veto H.R. 2275 if it is presented to him in its current form.

VIEWS OF  
SOUTHERN AFRICAN ENTITIES

BEFORE THE  
COMMITTEE ON RESOURCES  
OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING ASPECTS OF PROPOSED LEGISLATION  
AMENDING THE ENDANGERED SPECIES ACT  
INSOFAR AS THAT ACT RELATES TO  
FOREIGN SPECIES

September 20, 1995

IEWS OF SOUTHERN AFRICAN ENTITIES  
REGARDING ASPECTS OF PROPOSED LEGISLATION  
RELATING TO FOREIGN SPECIES

OVERVIEW

These hearings center on H.R. 2275, legislation designed "To reauthorize and amend the Endangered Species Act."

Most of H.R. 2275's provisions concern regulatory actions affecting species and persons within the United States. It would be inappropriate for foreign nations to express an opinion about U.S. domestic matters. The southern African governments are extremely gratified, however, that the bill contains a number of extremely important and beneficial provisions about the treatment under the Act of foreign species. If enacted, these provisions will go a long way towards correcting the southern African nations' problems with the way that the existing Act has been applied to foreign species.

In addition, these provisions about foreign species can help African nations and others to expand wildlife populations and to save habitat.

GOVERNMENTAL EXPRESSIONS OF CONCERN

Under the current Act, the U.S. government authorities' determinations about southern African species have been extremely troubling to the southern African nations' governments. These concerns have been expressed repeatedly.

On March 10 of this year, for example, the Directors of the wildlife management agencies in four southern African countries--Zimbabwe, Namibia, Zimbabwe and Malawi--wrote to the Chairman of this Committee. Expressing their belief that "[t]he Act is fundamentally flawed as far as foreign species are concerned," the agency directors offered detailed suggestions for improving the Act in this regard.

Soon thereafter, on April 27, the Ambassadors of these southern African nations presented a formal Diplomatic Note on this subject to the U.S. Department of State. In their Note, the Ambassadors note that deficiencies in the application of the Act to foreign species "have been a source of deep regret to our Governments."

Copies of the March 10 letter and the April 27 Diplomatic Note are attached to the text of this document.

HOW THE CURRENT ACT CAN UNDERMINE  
CONSERVATION PROGRAMS IN FOREIGN NATIONS

As applied to countries like those in southern Africa, the current Act discourages conservation.

Most southern Africans are rural people who cannot be expected to practice conservation for aesthetic reasons. They are poor: family incomes are about \$100 yearly. These people compete with the wildlife for use of the barely-arable land. On that land, the large mammals frequently threaten the peoples' crops and villages and even their lives.

These rural people will have an incentive to conserve the wildlife only if their families can get some economic benefit in return.

The southern African governments have strict programs to conserve and protect wildlife, but these programs allow rural families to get income from carefully-regulated use of their wildlife.

But the current Act often frustrates these governments' conservation programs. The problem is that the Act assumes that conservation is best accomplished by strict prohibitions on trade and use. In southern Africa, however, much of the wildlife can thrive with limited trade and use. And this trade and use provides the rural population with income that relieves their poverty while giving them an incentive

to conserve their wildlife. At the same time, this trade and use provides southern African governments with funds that are used to finance wildlife parks and anti-poacher campaigns.

For these reasons, in their March 10 letter to Chairman Young, the southern African governments urged that the Act should be aligned with the the International Convention on International Trade in Endangered Species of Wild Fauna and Flora (known by its acronym, "CITES"), an international organization that regulates trade in wildlife. Although CITES totally prohibits trade in some wildlife, CITES allows limited trade and use under quotas where this helps conservation.

PROVISIONS OF H.R. 2275  
REGARDING FOREIGN SPECIES

*Respect for Foreign Programs.* Of special importance are H.R. 2275's provisions directing U.S. authorities to "cooperate" with and "support" foreign nations' conservation strategies, and not to "obstruct" foreign conservation programs (§§ 207(a), 504(a)).

In their Diplomatic Note, the Ambassadors noted that the current Act has been administered so as to "frustrate our Governments' strategies for wildlife conservation" and to "infringe upon the sovereign right of our Governments to take responsibility for managing our own wildlife."

H.R. 2275's provisions for foreign species take account of the foreign governments' right to have their sovereignty respected.

It is important to note that these provisions of H.R. 2275 apply only to foreign nations whose wildlife programs are responsible under international standards. Those standards are set by CITES. Thus, H.R. 2275's provisions "Respecting the Sovereignty of Other Nations" (§ 207), apply only to foreign species which occur in a nation that is a member of CITES, and



U.S. authorities retain the power to act unilaterally whenever they have substantial evidence that a foreign conservation program "is not consistent with" CITES

*Aligning the Act With CITES.* H.R. 2275 also contains many provisions that align the Act with CITES. In the case of a foreign species that is listed under CITES, for example, U.S. officials are directed not to determine that the foreign species is endangered or threatened unless CITES does not provide adequate protection (§ 301(a)). Similarly, with respect to foreign species that are threatened but not endangered, the U.S. authorities are instructed not to prohibit any act that is permissible under CITES (§ 207(b)).

This provision recognizes that the United States' duplication of CITES regulation is inappropriate.

It is also an anachronism.

Under current law, the U.S. authorities make their own independent determinations about whether non-U.S. species are endangered or threatened; these determinations need not conform to CITES' findings. The U.S. authorities' findings can result in trade embargoes and prohibitions on use--even when CITES has determined that limited trade under quotas will aid the species' conservation.

This conflict is an unintended consequence of earlier U.S. endangered species laws. The current Endangered Species Act's provisions for the listing of foreign species originated at a time when there was no effective international regulation. The Endangered Species Preservation Act of 1966 protected only "native fish and wildlife."

Three years later, in the Endangered Species Conservation Act of 1969, Congress broadened the reach of the law to forbid importation from a foreign country of any "species...threatened with worldwide extinction."

In the 1969 legislation (§5), Congress noted that there was no international organization working "[t]o assure the worldwide conservation of endangered species." Congress therefore directed the Secretary of State to convene a meeting of the world's nations for the purpose of creating an international convention on the conservation of endangered species.

As a result of Congress' direction, in early 1973, eighty nations met in Washington and adopted the Convention known as CITES. CITES now counts more than 120 countries (including the United States) as Parties, or member states. CITES embodies a detailed set of regulations designed for "the protection of certain species of wild fauna and flora against over-exploitation through international trade."

CITES can and has imposed sanctions for violations of its rules. CITES is now empowered to take remedial actions. Where CITES regulation is adequate, there is no longer any need for U.S. authorities to continue making their own independent assessments as to foreign species.

*Improving Consultation.* The Ambassadors observed in their Diplomatic Note that their governments' concern about the Act is aggravated by the U.S. officials' failure to consult adequately with the foreign governments before taking actions affecting foreign wildlife. Under the Act, the U.S. authorities are not required to consult with foreign governments, and they often fail to heed those governments' views. Thus, in their March 10 letter to Chairman Young, the southern African nations noted that--when the U.S. authorities proposed to reclassify the Nile crocodile as "threatened," they sent a short telex to the U.S. embassies in the range states, but in many cases the telex never reached the appropriate foreign government agencies.

As the Ambassadors also observed, their governments' wildlife management agencies, staffed by well-qualified professionals, have a special

competence in developing wildlife management strategies that are suitable for local conditions. These local officials work in the field with their wildlife on a daily basis. Yet, under the current Act, Washington-based U.S. officials, located far away from the foreign wildlife, are put in a position to second-guess and overrule the foreign professionals' wildlife strategies and programs that have proven successful in practice.

H.R. 2275 provides for meaningful consultations (§§ 207(b) and 301(a)(2)). At the end of those consultations, if the officials of the United States and the foreign nation cannot agree, the U.S. officials would still be able to put their proposal into effect, but the President of the United States would have an opportunity to review the matter first. If the President is required to resolve any conflicts between different U.S. federal agencies, as H.R. 2275 requires (§401(b)), it is especially appropriate that the President resolve disputes between a U.S. federal agency and a foreign nation. Under standard U.S. government procedures, this provision of H.R. 2275 would ensure that the President receives the views of the U.S. Department of State about a federal agency's proposals under the Act that may violate the United States' international obligations.<sup>1</sup>

*Defining "Conservation."* Under changes made by H.R. 2275, the Act would no longer define "conservation" so that it authorizes "taking" as a "conservation" measure only when population pressures within an ecosystem cannot be otherwise relieved (§502(b)). In their March 10 letter to Chairman Young, the southern African wildlife agency directors opposed restricting "oftakes" to situations where

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<sup>1</sup> For similar reasons, the Civil Aeronautics Board was required for many years to submit its orders with respect to any foreign air carrier to the President for the President's approval. See *Chicago & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 115 (1948).

they were necessary to relieve population pressures. As the wildlife agency directors noted, regulated offtakes are an important source of revenues that fund conservation programs. Such offtakes also provide income for rural peoples, income that gives those peoples an incentive to conserve their wildlife and to oppose poaching.

\* \* \*

H.R. 2275 also contains other provisions regarding foreign wildlife that are welcome. These include recognition of CITES' role in imports and permits, vindication of CITES' "non-detriment" standard, and recognition of the benefits from inherently limited uses (§§ 204(b) and (d), 207 (b) and (c)).

Such provisions can allow our governments to create a better environment and better conditions for our people. The southern African nations hope that such provisions for foreign species will become part of an amended Endangered Species Act.

The southern African nations thank this Committee and the Congress for their attention to these problems.

DEPARTMENT OF NATIONAL PARKS AND WILD LIFE MANAGEMENT  
P.O. Box CY140, CAUSEWAY, Harare, Zimbabwe

Congressman Don Young  
Chairman of the House Natural Resources Committee

10th March 1995

Dear Sir,

**REVISIONS TO THE ENDANGERED SPECIES ACT**

The Directors of the agencies responsible for wildlife in the four southern African governments of Botswana, Malawi, Namibia, and Zimbabwe met on 23-24 February 1995 and discussed, *inter alia*, the initiative you are currently taking to revise the United States Endangered Species Act. Enclosed are a number of comments which resulted from our discussions which we would ask you, and the House Natural Resources Committee, to take into account during the rewrite of the Endangered Species Act (ESA).

We would like to congratulate you on the initiative to rewrite the Act. We do not feel that the deficiencies in the present legislation can be remedied simply by applying its provisions more liberally or by introducing "user-friendly" policies, as appears to be the approach of the present Executive. The Act is fundamentally flawed as far as foreign species are concerned (and, possibly, North American species too!) and requires a thorough re-examination.

Our preferred changes to Act are arranged in order of importance. Whilst we are not optimistic that our inputs are likely to affect the basic philosophy behind the ESA or its system of operation in the United States, we hope that we may at least influence your approach to the listing of foreign species under the Act — the issue of direct concern to us.

We note that the 1966 Act included only native species: foreign species were added in 1969 when the listing provision was added. The inclusion of foreign species in the Endangered Species Act is discussed by Richard Littell in his book "Endangered and Other protected Species: Federal Law and Regulation":

"The United States cannot legislate a solution to a problem that is global in scope. The principal threat to species stems from the destruction of their habitats. While it is beyond our capacity to protect all habitats important to endangered species, Congress believed that this nation should still act to the extent of its ability to do so."

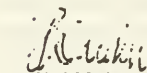
"Outside US borders, the Endangered Species Act restricts prohibited conduct by persons subject to the jurisdiction of the United States. To enforce this rule, the U.S. Government may conduct law enforcement investigations and research in foreign lands.

"The United States is also an important market for wildlife trade. Allowing unrestricted trade would increase the demand for endangered species and their products. It would give exploiters an incentive to violate the law. By restricting that trade, Congress decided, this country can add a significant weapon to the arsenal of conservation."

We appreciate the concern shown by the United States for conservation in foreign lands, but point out that the attempt to help global conservation efforts through the ESA has not worked well because the Act has fundamental flaws. On behalf of the SACIM Board (Southern African Centre for Ivory Marketing), I have pleasure in submitting some comments which may address some of these deficiencies.

It is relevant to your work that the CITES treaty is also undergoing an evaluation at the moment. Since CITES is based on very similar principles to the ESA, many criticisms of CITES are equally applicable to the ESA. We enclose for your interest a document "CITES II" which details the deficiencies in CITES from a southern African perspective. Some of these may also affect the deliberations of your committee.

Yours faithfully



W.K. Nduku

DIRECTOR

CHAIRMAN OF SACIM BOARD

CITES MANAGEMENT AUTHORITY FOR ZIMBABWE

**SUGGESTIONS FOR THE IMPROVEMENT OF  
THE UNITED STATES ENDANGERED SPECIES ACT**

submitted by

**Botswana, Malawi, Namibia and Zimbabwe**

An Issues Analysis (Fig. 1, page 7) summarizes the comments which are to follow.

**1. INFLEXIBLE LINKAGE OF SPECIES STATUS AND PRESCRIBED ACTIONS**

The ESA operates on a set of prescriptions which progressively reduce the possibilities of use (or, in the case of foreign species, trade with the US) as wildlife populations reach the critical levels "threatened" and "endangered". Usually, a total trade ban is the result. However, we have strong evidence to show that total trade bans can be highly counterproductive. Many species need protection but can thrive with controlled trade. Trade provides economic incentives that aid and finance wildlife conservation. Particularly in the regions where most wildlife lives, like South America, Asia and Africa, governments cannot enforce conservation without local support. A total ban may deprive local populations of any lawful source of income from their wildlife, whereas, in contrast, well-regulated trade can provide sizeable economic incentives to local populations thus encouraging conservation.

The inflexible prescriptive approach of the ESA conflicts with common-sense. In the southern African region we have learnt that the degree of endangerment of a species is a matter for note only: how to improve the status of that species is a totally separate issue. In the more and more frequent cases where the answer to the decline of a species is to increase its legal value to those on whom its survival directly depends (notably, in many contexts, landholders), the ESA actually works *against* conservation.

**FIRST PREFERENCE**

*The basic assumption of the Act that the "threatened" or "endangered" status of a species should lead to mandatory abolition or restriction of its use needs to be reconsidered. The Act should be amended to allow flexibility so that even if a species is truly endangered and subsequently listed, a trade ban does not automatically result. When it can be demonstrated that trade may create incentives which will contribute to the recovery of the species, the answer may lie in enhancing the economic value of species rather than attempting to remove it.*

## 2. THE LISTING OF FOREIGN SPECIES

In our view, it is questionable whether the government of any country should go so far as to assume the mantle of global conservator of species. No country possesses the all-encompassing expertise needed to classify the status of all foreign species correctly and, more importantly, to diagnose their conservation requirements. The rapid development of capacity and expertise in most developing countries has resulted in a situation where the majority of expert opinion on both species' status and appropriate methods for species conservation resides in the range states for that species.

The following are valid reasons for any country to control the import of specimens of foreign species —

- (a) where a country is called upon to initiate such actions as a Party to an international treaty;
- (b) where a country is directly requested by another country to do so;
- (c) for veterinary health considerations;
- (d) where the import of live specimens of a species may pose a conservation threat to local species.

Beyond these reasons, it is more difficult for a nation which it is not a range state for a species to justify the inclusion in its legislation of selective or prohibitive measures which override the intentions and spirit of the GATT treaty.

It is not necessary to list foreign species under the ESA. Combined with the Bass Act of 1926, the Lacey Act of 1900 prohibits interstate transportation of fish or wildlife taken in violation of national, state or foreign law. We contend, therefore, that armed with the Lacey Act, together with CITES, certain non-controversial requirements of the ESA and the Pelly Amendment to the Fisherman's Protective Act (under which the President has the discretion to embargo wildlife products from a nation whose practices diminish the effectiveness of CITES), the USA has more than adequate tools to influence the conservation of foreign species. The parts of the ESA to which we refer here are those parts that treat certain violations of CITES as violations of US domestic law. For example, no person subject to US jurisdiction may trade in any specimen contrary to the CITES Convention. If US domestic legislation were modified to accord still more closely to CITES, this would be more appropriate than the operation of what is essentially a parallel system in which there is a major divergence from CITES listings.

### SECOND PREFERENCE

*The most effective way to deal with foreign species in the ESA is to abandon the listing process and adopt a procedure that aligns the United States legislation with the Convention on International Trade in Endangered Species of Fauna and Flora. The very assumption that the United States can or should try to influence wildlife management in other sovereign countries is highly controversial and considered offensive in some circles.*



### 3. REQUIREMENTS IF FOREIGN SPECIES ARE TO BE LISTED

#### (a) Criteria for Listing

For the purposes of the Act a species is considered "endangered" if it is in danger of extinction throughout all or a significant part of its range. While the status of a species is judged according to five factors, these do not constitute true criteria. Therefore the decision as to what constitutes "endangered", which is fundamental to the listing process, is highly arbitrary and often, we submit, capricious. This would appear to be the opinion of the House too. We note that in 1982 the House Committee stated its concern that the endangered species lists "harbor a number of improperly listed species" noting that some listings were made "for emotional reasons or based on improper biological data".

*As with CITES, objective criteria are required to determine when a foreign species is "threatened" or "endangered" in terms of the Act.*

#### (b) Economic factors influencing conservation of foreign species

In 1978 amendments were made that required the Secretary of Interior make economic assessments at the time of listing and, as far as foreign species are concerned, this would have gone a long way to solving some of the problems we face — especially if the analysis was made at the level of local communities. Unfortunately, in 1982 all economic considerations were removed from the Act.

*Where foreign species are concerned, economic considerations should be reintroduced and cost/benefit analyses required in the listing process.*

#### (c) The requirement to show enhancement or need to reduce populations

As a result of various court cases, when making exemptions it is now a requirement that the regulated taking is shown to enhance populations or that an offtake is necessary to relieve population pressures. This has proved a major obstacle with foreign species, especially when these are inappropriately listed. Enhancement is notoriously difficult to define and demonstrate. The ESA should adopt the lead of CITES which simply requires a demonstration of "non-detriment". The idea that sport hunting is only sustainable or desirable when a population has to be reduced is clearly incorrect and, if applied in southern Africa, will simply be a hindrance to the recovery of species.

*The Act should be changed so that exemptions depend on demonstrating non-detriment (rather than enhancement) and exemptions for sport hunting should not be dependent on the need to reduce populations.*

## (d) Application of the Precautionary Principle

Under the ESA, the killing of endangered species is expressly forbidden but, for threatened species, the Secretary of Interior has considerable discretion to "issue such regulations as he deems necessary and advisable to provide for the conservation of species." In 1990, the Secretary decided to err on the side of protection and after codifying the protections for endangered species, issued a regulation that extends the same protections to most threatened species. Exemptions have to be sought to allow sport hunting trophies of threatened species, such as the African elephant, to be imported into the United States and to allow commercial imports when, for example, it is argued that Australian kangaroos or African crocodiles are inappropriately listed or when it is argued that, for these species, trade is a means to encourage conservation.

*With foreign species there is a need to increase the distinction between endangered and threatened species. With threatened species the onus should be on the party that is recommending listing to demonstrate that sport hunting and commercial imports will be damaging to the species. Even if this is the case, split listing and very specific sanctions must be required.*

## (e) Creating disincentives by punishing where there is no intent

We consider it a further problem that the Act is administered with the belief that even an inadvertent importation of a designated species violates the Act's purpose. As a result, tourists are penalised when they unwittingly attempt to import into the USA items comprising parts or products of listed species. This has the effect of discouraging tourists from purchasing curios in developing countries even where these are clearly listed by the producer country as legal. Where conservation is based on the return that wildlife species can make to impoverished rural communities, as in much of southern Africa, this has marked negative conservation affects. Hunters have been similarly affected when trying to import species — sometimes because they have been listed between the time of the start of the safari and the time of importation of the trophy. In the same vein, we realise that the ESA does not prohibit hunting world-wide. The prohibitions of Section 9 do not apply in foreign states. However, hunters risk penalties and forfeiture if they bring their trophies of endangered or threatened species (for which there is no exemption) back to the United States. Again, this works against sport hunting in general and negatively affects our conservation programmes, many of which are driven by the value imparted by trophy hunting.

*Inadvertent violation of the Act with respect to foreign species should not result in penalty.*

## (f) Concerns about possible aid withdrawal

The Department of the Interior decided that federally funded projects overseas are not within the scope of the ESA's consultative procedures. The court of appeals disagreed, and the Supreme Court reviewed the case. Only one Justice expressed a view on the merits of the case, with the majority ruling that the complaining parties lacked standing to litigate the issue. It is therefore still a moot point as to whether Federal Action under Section 7 is limited to action within the USA. It is therefore of major concern to four southern African nations that a court action could stop USAID funding to a natural resource management project (such as Zimbabwe's CAMPFIRE) in which elephants are hunted and culled if the elephant was reclassified as "endangered".

*It should be made clear that Section 7 does not apply to foreign species.*

## THIRD PREFERENCE

*If foreign species will continue to be listed under the Endangered Species Act, there are a number of improvements which could be made to enhance conservation in the affected range states.*

## 4. INAPPROPRIATE LISTINGS DUE TO INADEQUATE CONSULTATION

It is common that foreign species are listed inappropriately because the US Fish and Wildlife Service has an inadequate consultation process with the range states, is unduly influenced by domestic constituencies which bear none of the costs of listings, and has no capacity to investigate by direct means the status of any population in a foreign country. Consultation is, in fact restricted to a wholly inadequate requirement that the Secretary must *try to* notify foreign governments and take into account any efforts they may be making to protect the species. This is reflected not only in listing, but also the formulation of regulations and guidelines. When the Nile crocodile was being considered for transfer from the endangered to threatened category, each range state received a short telex through the US Embassy in its territory. In many cases, this never even reached the appropriate government department.

## FOURTH PREFERENCE

*Where the listing of foreign species is a possibility, there is a need to strengthen the consultative process under the Act, and the process should be largely dependent on the acquiescence of the range states on whom the survival of the species depends.*



TELEPHONE (202) 332-7100

EMBASSY OF THE REPUBLIC OF ZIMBABWE  
 1608 NEW HAMPSHIRE AVENUE, N.W.  
 WASHINGTON, D. C. 20009

OUR REF.:

APRIL 27, 1995

YOUR REF.:

The Embassies of the four undersigned Governments being members of Southern African Centre for Ivory Marketing present their compliments to the Department of State and have the honor to refer to the current deliberations of the Congress regarding amendments to the Endangered Species Act of 1973.

Our Governments have been distressed for some time about the Act's application to species located within our territorial borders.

In the opinion of our Governments, the Endangered Species Act should be amended to end United States oversight of species that do not naturally occur within the United States. There is simple regulation of trade and use of such species by competent international and national entities. Over 120 Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora have agreed to observe stringent restrictions on international trade in imperiled species. Parties to the Convention, including the undersigned Governments, have enacted national laws that implement the Convention and that restrict use and trafficking in these species.

Unlike the Convention, the Endangered Species Act is premised upon the assumption that conservation is best accomplished by trade embargoes and strict prohibitions against use. For wildlife in countries like ours, however, that is not true. In our countries, inhabitants of our rural communities and large mammals compete for use of the land. Our rural people cannot be expected to cooperate in conserving the wildlife as having some economic value to themselves. Well-regulated trade in such species can provide economic value

for people in local communities while still allowing the wildlife to thrive. Similarly, restricted trophy-hunting can provide revenues for conservation with little loss of wildlife. Unlike the Convention, which allows trade in at-risk species under a quota system, the Endangered Species Act fails to take account of local conditions affecting non-United States species.

The result is that, under the Endangered Species Act, the Department of Interior has made determinations regarding non-United States species that:

- . are contrary to the regulatory plan of the Convention;
- . frustrate our Governments' strategies for wildlife conservation; and
- . infringe upon the sovereign right of our Governments to take responsibility for managing our own wildlife.

Such actions by the Department of Interior, as illustrated in the attachment to this Note, have been a source of deep regret to our Governments.

Our concern about the Endangered Species Act is aggravated by the failure of the Department of Interior to consult with our Governments about determinations concerning our wildlife. Our governmental agencies, staffed by well-qualified professionals, have a special competence in developing wildlife management strategies that are suitable to local conditions. Under the Act, the Department of Interior is not required to consult with our Governments, and it often fails to heed or defer to the views of our Governments.

Our Government wildlife agencies have written to chairman Young of the House Committee on Resources, suggesting amendments to the Endangered Species Act. We request that the Department of State inform the Congress of the views of our Governments.

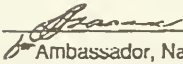
Our Embassies avail themselves of the opportunity to renew the assurances of our highest consideration.



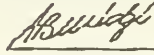
Ambassador, Botswana



Ambassador, Malawi



Ambassador, Namibia



Ambassador, Zimbabwe

Telephone: (202) 797-1077  
 Telegrams: MALAWIAMA, WASHINGTON, D.C.  
 Telex: 64348  
 Fax: (202) 265-0976  
 Communications should  
 be addressed to:  
 The Ambassador

In reply please quote No. ME/ADM/1/94



MALAWI EMBASSY  
 2408 MASSACHUSETTS AVE., N.W.  
 WASHINGTON, D.C. 20002

5th May, 1995

Dear Colleague,

Kindly refer to our discussions yesterday, May 4th, 1995. As indicated in our discussions, Malawi is in full agreement with the steps taken and in order to expedite the processing of the joint request to Congress, it is proposed, and it would appear you were in agreement that the initial document signed by Botswana, Namibia and Zimbabwe is forwarded to the relevant authorities.

On the part of Malawi, and in the absence of any documents at our Office here to give a background to the subject of the endangered species, it was considered desirable that the parent Ministry in Lilongwe be appraised of the situation and the agreed position. To this end, communication was sent to Lilongwe and as soon as a clearance has been given we shall communicate with you and in turn, we shall send to the authorities here the necessary document with our signature appended to validate the proposal in the presentation by the Ambassadors of the four governments involved in the matter.

Meanwhile, in the space provided for Malawi's signature in your presentation, kindly indicate "Malawi authorization and signature to follow".

I am sure this arrangement will be found satisfactory to all parties concerned.

Yours faithfully,

W. Chokani  
AMBASSADOR

WC/hmc

His Excellency Amos B. M. Midzi  
 Ambassador  
 Embassy of the Republic of Zimbabwe  
 1608 New Hampshire Avenue, N.W.  
 Washington, D.C. 20009

JOINT TESTIMONY

ALASKA STATE SENATE PRESIDENT DRUE PEARCE

AND

ALASKA STATE HOUSE SPEAKER GAIL PHILLIPS

BEFORE THE

UNITED STATES HOUSE COMMITTEE ON RESOURCES

REGARDING

H.R. 2275

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

September 20, 1995

Mr. Chairman and members of the House Committee on Resources, I want to thank you for this opportunity to testify on one of this country's most powerful conservation laws - the Endangered Species Act. For the record, my name is Drue Pearce, President of the Alaska State Senate. I will be presenting joint testimony on behalf of the Alaska State Senate and for House Speaker Gail Phillips and the Alaska State House.

Since my time is limited, I would ask that our entire testimony be submitted for the record and use of the Committee. We have spent considerable time participating in the reauthorization process and offer our assistance in any way possible to support you in this endeavor.

Mr. Chairman, I want to make it clear that my reason for being here is not to advocate the dismantling of the ESA. Our reasons for testifying are that we believe the Act is badly in need of repair, it is not meeting the original intent of Congress and the agencies given the responsibility for implementing the Act have abused their authorities and have used the Act to further unrelated agency objectives.

We want to express our sincere appreciation for the dedication and hard work of the Endangered Species Task Force chaired by Representative Pombo. Many individuals and organizations have worked diligently in support of the Task Force's efforts and have



provided substantial testimony and supporting documents. House Speaker Gail Phillips and I presented joint testimony to the Task Force with specific recommendations for ways to improve the performance of the Endangered Species Act. We hope the Committee on Resources will utilize those records as you proceed with your deliberations on H.R. 2275.

Congress, as well as state legislatures, frequently avoid trying to legislate minute details into complicated laws because of the difficulties in anticipating all possible legitimate exceptions which should be considered, the complexities of the issues or the politics associated with those minute decisions. In good faith, we extend authority to the agencies to develop implementing regulations which provide the detail necessary to implement the laws while adhering to the basic intent of the original legislation. The ESA has, quite frankly, suffered from this lack of consideration for detail in the law.

It is unfathomable that Congress intended for the ESA to be used as the legal corner stone of all biodiversity and environmental planning within the federal government. It is also hard to believe that Congress intended for the law to be used as a legal bludgeon or blockade against all legitimate resource development in our country.

From Alaska's perspective, we can point to some definite successes associated with the federal ESA and the state's own Endangered Species Act. Alaska's bald eagles have been used to successfully reestablish populations of our national bird into areas where they have virtually disappeared due primarily to the indiscriminate uses of DDT. Similarly, peregrine falcon populations, both in Alaska and in the contiguous United States have recovered dramatically due to good conservation programs, cooperation between the states and the federal government and the contributions of many private sources throughout the country.

The Aleutian Canada goose, a ground nesting goose in the Aleutian islands, are on the road to recovery following the removal of very effective predator foxes and the reintroduction of the species back to its former range. Here again, good cooperation between the citizens of our state, the state agencies and the federal agencies made it all possible. **In virtually all of the successes you have seen one key ingredient -- cooperation and old fashioned partnerships.**

Unfortunately, for every success of the ESA, your Committee will find seemingly endless examples of governmental abuse of authorities. In our testimony before the Task Force in April of this year, we used four examples to illustrate how the ESA was being effectively abused by the federal agencies and the court system. The examples were salmon, wolves, goshawks and sea lions.

Our testimony emphasized that the listing or potential listing of many species including salmon, wolves, goshawks and others have been primarily done to meet the political agenda of the listing agency. Significant abuse of power in the listing of "distinct population segments" has occurred with the listing, or threatened listing, of populations that would never qualify under any strict scientific standards. The potential listing of every stock of salmon as a "species", for instance, under the Act presents insurmountable odds against

successful implementation of the law. It also illustrates a prioritization process gone badly awry.

Our testimony also highlighted the conflicts associated with the listing or potential listing of populations associated with the extreme outer fringes of a species range. We also questioned the prioritization process within federal agencies in dealing with endangered species problems. We have expressed our opinion that the listing process has been used to expand federal agency authorities over traditional state resources and to leverage Congress for more agency funds. Frequently, federal agencies have ignored declining resources until they reach the level where listing is possible.

Since our previous testimony is available for your use, I will not duplicate those examples here but will assume that the Task Force material is available for the use of this Committee.

Over the last several years, we have witnessed a significant change for the worse in federal/state cooperation and the creation of true partnerships. **The ESA has been effectively used by the federal agencies as a weapon and not a tool of conservation.** It is also important to add that the federal courts are equally responsible for the hostility towards the ESA. **Rigid interpretations of the law by the federal courts have tied both the hands of the federal and state agencies in trying to craft reasonable solutions to very complex problems.** The combination of agency and court interpretations of the law have served to create a conservation program that is phenomenally expensive and practically ineffective. If you want to measure the success of this program, ask how many species have been delisted.

Mr. Chairman, we congratulate the Committee for the thought and consideration for public testimony that went into the drafting of H.R. 2275. It is our belief that this legislation is a step forward in our attempt to craft a federal law that is workable and effective. We strongly support many of the concepts presented in this legislation but we are, however, still concerned about some new concepts which are included and some essential items that were excluded. The following are our comments directed specifically at H.R. 2275.

#### Definition of Species

The Alaska State Senate and House strongly support your efforts to redefine species under the act. From our perspective, the definition of species and the interpretation and implementation by the federal agencies is the single biggest problem with the Act in its present form. Although we support the concept of requiring congressional approval for listing of population segments, **we really recommend that "distinct population segments" be dropped from the act and strict taxonomic standards be established or required for listing of species or subspecies.** Leaving the listing process to agency discretion has not been remotely satisfactory.

#### Conservation Goals

We strongly applaud the provisions which authorize the selection of an appropriate conservation objective for each listed species. One of the greatest difficulties arising from existing law is the judicially established mandate that each listed species is to be fully recovered regardless of cost or consequences. No rational conservation program can operate, especially in an era of limited financial resources, under such a regime. It is imperative that Congress establish a more flexible approach that enables resources to be directed toward those species where recovery can be achieved. Moreover, recovery efforts must be able to accommodate other uses and users.

The comprehensive conservation planning program outlined in the bill will facilitate the establishment of a more rational and discriminating program. With greater rationality injected into the conservation and recovery efforts, the battles over listings and consultation should diminish since their consequences will not be so arbitrary and onerous. We are persuaded that amending the conservation and recovery standards is the very heart of ESA reform.

### Private Property Rights

We concur with the general direction taken by the committee in the protection of private property rights and for the development of reasonable and positive incentives for the protection of endangered species on private lands. To-date the governmental track record regarding cooperative protection and enhancement of endangered or threatened species on private lands has been abysmal.

### Consultation Process

We agree with the approach to allow non-federal persons to use the consultation procedures in section 10. We also strongly recommend that an amendment be considered to allow the states to participate in the section 7 consultation process. It is frequently not necessary or advantageous for a cooperating agency with concurrent jurisdiction to utilize the section 10 process.

### Federal Biological Diversity Reserve

**Mr. Chairman, we have to respectfully oppose the creation of a new system of Federal Biological Diversity Reserves.** For one thing, we are strongly opposed to mixing biodiversity management with the listing and recovery of endangered species. Although we do agree that proper implementation of biodiversity concepts and good conservation practices should avoid species listings, integrating biodiversity management with the ESA results in a frightening expansion of agency authorities under the ESA. Biodiversity is a sound scientific principle but transmuting it into an unknown legal standard is fraught with problems. **We would propose that biodiversity management principles should be debated separately on their own merits and not mixed into the reauthorization of ESA.**

We are strongly opposed to the creation of another overlapping classification for "national

under the ESA. Biodiversity is a sound scientific principle but transmuting it into an unknown legal standard is fraught with problems. **We would propose that biodiversity management principles should be debated separately on their own merits and not mixed into the reauthorization of ESA.**

We are strongly opposed to the creation of another overlapping classification for "national conservation systems" in Alaska. Of all the restrictive land classifications in the United States, Alaska is blessed with 68 percent of all national park service lands, 85 percent of all fish and wildlife service refuge lands and 60 percent of all wilderness acreage. When these areas totaling almost 130 million acres, were created in 1980, Congress established major use exceptions to accommodate traditional Alaskan uses and to provide for compatible development of some natural resources. Alaskans are already witnessing the losses of many supposedly protected privileges due to the overly restrictive policies of the federal agencies who seem to totally disregard the needs of Alaskans and the guarantees provided by Congress. We are concerned that overlaying national park status with wilderness designation coupled with biological diversity reserve status would virtually guarantee the most restrictive management possible at the expense of most Alaskans. The existing language in Title VI provides virtual carte blanche to the agencies to exercise their discretion in pursuit of an undefined goal. Vesting that kind of discretion in the agencies is inconsistent with the thrust of H.R. 2275 and contrary to good public policy.

Many Alaskans are also fearful that the creation of this type of protective classification for national parks and refuges would only be a hop-skip-and-jump away from other federal lands which are now supposedly committed to multiple use management. We are strongly opposed to such action and request that Congress clearly state its intent to avoid expansion of the "Reserve" concept to any multiple use lands.

#### Quantitative Listing Criteria

As submitted in our previous documents, the Alaska legislature strongly supports the development of precise quantitative criteria for listing species as endangered or threatened. If these criteria are not available, then we propose a process for the development of criteria for listing.

#### Mandatory Delisting Process

Congress has mandated that recovery plans be developed for threatened and endangered species. **There is no reason not to require mandatory delisting once population objectives have been met.** Congress should require immediate initiation of the delisting process once population thresholds have been reached.

#### Greater Role of States

Mr. Chairman, we concur with the importance the Task Force and this committee have placed on elevating the role of the states in the implementation of the endangered species act. Since the states carry the bulk of the burden for protecting and enhancing wildlife,

including threatened or endangered species, we believe the states must have a more meaningful role in the listing, delisting, and recovery processes. Consultation and cooperation must extend beyond mere notification.

### **Federal Advisory Committee Act**

If the states are going to have any substantial role in the implementation of the federal Endangered Species Act, the Endangered Species Act or state agencies must be exempted from the provisions of the Federal Advisory Committee Act (FACA). It is particularly important to exclude state agencies from FACA if true partnerships between federal and state agencies are going to become a reality. We contend that Congress never intended for governmental organizations with statutory or regulatory authority to be included under the Act. The Act is presently being interpreted by the federal agencies and the courts to treat state agencies exactly the same as any private citizen.

### **Clearer distinction between Threatened and Endangered Species**

H.R. 2275 has attempted to address the need to separate "threatened" listed species from those that are listed as "endangered." Congress should make it clear that greater flexibility for both state and federal agencies has to be applied to the management principles related to threatened species. The agencies should be utilizing the threatened listing as a category which identifies a species in a precipitous and unnatural decline but which can allow for management flexibility during the recovery stages. The federal agencies have for all practical purposes combined the two listing because it makes their lives simpler and it fits an anti-use agenda being adopted by many of the federal conservation agencies.

### **Peer Review**

We strongly support provisions in H.R. 2275 to provide a technical peer review process for implementing the Endangered Species Act.

### **Conclusion**

Mr. Chairman, we would be negligent if we did not formally recognize that there have been some major and positive changes initiated by Secretary Babbitt towards his agency's implementation of the Endangered Species Act. There has been significant improvements in the policies towards private property owners, improved cooperation between the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, greater perceived involvement by state agencies and more realistic policies related to public involvement and ESA interpretations. The problem is, quite frankly, that the Secretary and the federal agencies have offered many of these revolutionary changes only after Congress and the public have threatened a major overhaul of the Act. Why were these changes never offered before when it was abundantly clear that the Act was failing?

Some of the policies adopted by Secretary Babbitt should be considered for inclusion in this rewrite of the ESA. We are, however, adamant that Congress should precisely spell out its

intent in this revision of the Act. Secretarial actions cannot overcome faulty court interpretations of the Act which have hampered effective implementation of the law. It is also safe to say that after 20 years of intolerance and indifference towards the public and the state agencies, the public and the states do not trust the federal agencies to establish or maintain a cooperative attitude in the implementation of the ESA. Congress must precisely spell out its intent so that the agencies and the courts have little or no room for mischief and, more importantly, to assure that genetic diversity is adequately protected.

Mr. Chairman, I want to thank you for this opportunity to testify on behalf of the Alaska State Senate and Alaska State House of Representatives. We have offered an honest critique of H. R. 2275 from Alaska's perspective.

We want to emphasize the importance of the task-at-hand and the importance to Alaskans. Although Alaska presently has very few species listed under the ESA, we have already witnessed the abuses instigated by insensitive and uncooperative federal agencies. We have a lot at stake in this process.

A true partnership between the federal, state and private land owners are essential if we are to come close to meeting the expectations of Congress and the American public. A true Endangered Species Act partnership will never occur unless Congress clearly mandates the conditions and the role of each participant in that partnership. That partnership must reward performance and provide real incentives for the partnership to be effective. The states must be given some latitude to devise unique management programs or recovery efforts which will work successfully in that specific state.

We hope our suggestions and comments here will prove helpful in your deliberations. We stand ready to assist you in any way we can in this momentous effort.

Thank you again for this opportunity to address this Committee.



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*Capital Office*  
1875 Connecticut Ave., N.W.  
Washington, DC 20009  
(202) 387-3500  
Fax 202-234-6049

STATEMENT OF MICHAEL J. BEAN  
CHAIRMAN, WILDLIFE PROGRAM  
ENVIRONMENTAL DEFENSE FUND

on

HR 2275, THE ENDANGERED SPECIES CONSERVATION  
AND MANAGEMENT ACT OF 1995

September 20, 1995

*National Headquarters*

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257 Park Avenue South  
New York, NY 10010  
(212) 505-2100

5655 College Ave.  
Oakland, CA 94618  
(510) 658-8008

1405 Arapahoe Ave.  
Boulder, CO 80302  
(303) 440-4901

128 East Hargett St.  
Raleigh, NC 27601  
(919) 821-7793

44 East Ave., Suite 304  
Austin, TX 78701  
(512) 478-5161

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The bill before the Committee will not accomplish its stated purposes of improving protection of endangered species while sensibly reforming the Endangered Species Act. The principal practical consequence will be the denial of effective protection for many of our most imperiled wildlife species. Moreover, certain of its requirements are contrary to basic principles of wildlife management. Congress -- and the Chairman of this Committee -- have previously rejected similar requirements as unnecessary and wasteful. HR 2275 also contravene the first, and most fundamental, principle of the recent Republican Party policy statement on reauthorization of the Endangered Species Act: the primacy of sound science. The bill goes overboard -- way overboard -- in its effort to correct the problems that have arisen in the administration of the Endangered Species Act. Finally, certain provisions of the bill simply make no sense; others are so laden with inconsistencies and ambiguities that they will invite repeated litigation over how the Act's administrators choose to resolve them.

**1. The Practical Consequence of HR 2275 Will be the Denial of Effective Protection for Many of Our Most Imperiled Wildlife Species**

The changes made by HR 2275 will have real and dramatic practical impacts for many endangered species. The result will be the denial of effective protection for many of our most imperiled species. The following are among the consequences that will occur:

Smugglers of rhino horn, elephant ivory, and other wildlife contraband will find it much easier to thwart law enforcement efforts. Proposed section 11(e)(7)(C) (page 28, lines 4-12) requires the Secretary to release any specimen detained at entry or seized as evidence if he is unable within 30 days to identify it as being from a species protected by the Act or CITES. Though probably drafted with the example of a single sport hunting trophy in mind, this provision is not so limited. Instead, it applies to all situations, including commercial shipments of large quantities of contraband, such as medicinal powders suspected of containing rhino horn, mixed shipments of legal mammoth and illegal elephant ivory, and reptile skin watch bands, shoes, purses, and the like. To determine whether rhino horn is included in medicinal powders, sophisticated laboratory tests must be conducted to determine the presence of characteristic enzymes or other chemicals. Such tests may take as much as two weeks to conduct. Similar lengthy tests are often needed to make other positive identifications. Moreover, when a large



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quantity of specimens is seized (e.g., thousands of pieces of ivory), each must be tested to determine its legality. The practical consequence of the proposed provision will be to require the Secretary to hand back to smugglers rhino horn, elephant ivory, and other contraband that cannot be positively identified within the arbitrary time limit imposed. Smugglers attentive to what Congress has done will learn two easy lessons: break their shipments up into in as many individual components as practical, and time shipments to arrive as close together as possible. In these ways, they can be assured that even if their shipments are seized, the government will likely have to return them because its resources for making positive identifications will be overwhelmed.

The oil industry will no longer be required by the Act to take any measures to avoid killing sea turtles and other endangered species in its outer continental shelf operations. At present, the oil industry must sometimes take measures to reduce the likelihood that its offshore oil operations (including drilling operations; rig removal, tanker operations, and other activities) will kill or injure endangered species, including sea turtles, California sea otters, whales, and others. Under proposed section 9(a)(3)(D) (page 25, lines 22-25, and page 26, lines 1-4), however, they will no longer need to so because such killings would no longer be contrary to the Act. Whereas the killing of any endangered or threatened animal incidental to otherwise lawful activities is generally prohibited by the Act, this provision excepts incidental taking in the territorial sea or the U.S. exclusive economic zone. Thus, the oil industry and other industries operating in that area will no longer be required by the Act to do anything to avoid killing endangered species, no matter how inexpensive, reasonable, or necessary such restrictions may be.

To continue on the successful path toward recovery of the bald eagle, the Secretary must first determine that it is in the national interest to do so, seek and obtain congressional concurrence with that determination, invite 48 Governors and nearly 1,500 county governments to nominate representatives to serve on an "assessment team," appoint an assessment team with potentially in excess of 1,000 members, review the team's assessment, determine a "conservation objective" for the eagle, and replace the existing successful recovery plans for the eagle with a new conservation plan, all of which must be done within 18 months while simultaneously carrying out similar requirements for several hundred other species. Given that the bald eagle is well on the road to recovery and that its recovery has been accomplished with little controversy, one might rationally ask why these many byzantine requirements must be met in order simply to continue the efforts

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that have worked so smoothly and effectively for the past two decades. Unfortunately, although one can rationally ask this question, one cannot rationally answer it.

The governments of Rwanda, Burkina Faso, Uganda, Tanzania, Burundi, Angola, and more than 20 other African nations would all have to consent in writing to any proposal of the Secretary of Interior to strengthen protection for the African elephant by moving it from the threatened list to the endangered list. Without the consent of these foreign governments, only the President himself could order increased protection for the elephant. Even the President could not act, however, before the Secretary first transmitted any such proposal to each of these governments in the official languages of the various governments. These requirements, found in section 301(b) of HR 2275, require the prior written consent of all relevant foreign governments before any foreign species is placed on the endangered or threatened list. It is unclear whether these requirements are intended to apply retroactively, to species already on such list. Regardless of how that ambiguity is eventually resolved, it is clear that had such requirements been part of the law when it was enacted in 1973, the United States would have had to seek the consent of China and North Korea before putting the tiger on our own endangered species list, the consent of Libya before protecting the slender-horned gazelle, the consent of Iran and Iraq before protecting the Persian fallow deer, and the consent of Cuba before protecting the Cuban parrot, a bird that occurs in the Bahamas and Cayman Islands as well as Cuba.

## **2. HR 2275 Violates Basic Principles of Wildlife Management**

The Chairman and other members of this Committee who served in Congress in 1982 will remember the controversy then over a court ruling that held that before the export of bobcat pelts and products of other species included on Appendix II of CITES (the Convention on International Trade in Endangered Species) could be approved, federal officials had to have "reliable population estimates" of such species. The effect of this ruling was to prevent the government from approving such exports, since there were no reliable population estimates.

Wildlife management professionals sought relief from Congress. William S. Huey, then Secretary of the New Mexico Natural Resources Department, testified on behalf of the International Association of Fish and Wildlife Agencies that population information was "difficult to obtain and wholly unnecessary to sound management decisions." He added that

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"[r]equiring wildlife management decisions to be based on estimates of total population numbers is contrary to wildlife management as practiced for most species in this country." Douglas Crowe, then of the Wyoming Department of Game and Fish, added that "[w]ildlife resources are routinely managed without absolute numerical estimates of the population level." John D. Newsom, Assistant Secretary of the Louisiana Department of Wildlife and Fisheries, noted that "the state of the art in wildlife management has not advanced to the point that precise animal population numbers are possible, and more importantly it quite likely never will." Lonnie Williamson of the Wildlife Management Institute noted that the status of most wildlife "is monitored by use of population trend data and habitat analysis rather than by actual counts, which are extremely difficult and expensive." He characterized requirements to make reliable population estimates as entailing a "wasteful expenditure of scarce funds." Randy Bowman, of the Wildlife Legislative Fund of America, went even further. He maintained that requiring population data "threatens the entire structure of wildlife management," and would "at best result in the diversion of thousands of scarce wildlife management dollars into the accumulation of worthless data."

The Chairman of this Committee, who was then a senior member of the old Merchant Marine and Fisheries Committee, heard the complaints of the wildlife management professionals and played an important role in changing the law in response to those complaints. The result was enactment of section 8A of the Endangered Species Act, which provides that the Secretary "is not required to make, or require any State to make, estimates of population size in making" the determinations required by CITES. In its report explaining the provision, the Merchant Marine and Fisheries Committee noted, as the wildlife professionals who previously testified before it had done, that population information "is frequently impossible to obtain" and that to require it would be to impose a requirement "not based on sound wildlife management."

Anyone familiar with the history of this issue will be startled to learn that the bill now before the Committee imposes exactly the sort of information requirements that wildlife management professionals earlier denounced as unnecessary, nearly impossible to meet, wasteful of scarce conservation dollars, and contrary to sound wildlife management practice. Indeed, the bill imposes such information requirements not once, but at least three different times. Proposed section 4(b)(3)(a)(i) (page 75, lines 4-5) requires a petitioner to include in any petition to list a species "[i]nformation on the current population ... of the species." Proposed section 5(b)(2)(A)(4) (page 100, lines 21-22) requires assessment and planning teams to assess "the current

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population, and the population trend" of each endangered or threatened species. Finally, proposed section 5(c)(3)(C)(vii) (page 107, lines 3-8) adds to the law's existing requirement of objective and measurable criteria for recovery a specific requirement for a "population level target."

The legislative imposition of these requirements will have exactly the same result as the judicial imposition of similar requirements had prior to 1982: paralysis of the program due to the government's inability to fulfill the demands placed upon it. If, as the Chairman and Congress concluded in 1982, it was unnecessary, unrealistic, wasteful of scarce resources, and contrary to sound wildlife management practice to impose one such requirement then, it is triply unnecessary, unrealistic, wasteful of scarce resources, and contrary to sound wildlife management practice to impose three such requirements today.

### **3. HR 2275 Violates the First Principle of the Republican Policy Statement on the ESA: Insistence Upon Sound Science**

On August 1, the House Republican Policy Committee released a policy statement concerning reauthorization of the ESA. Its first, and most fundamental, principle was to insist upon the use of sound science throughout the implementation of the ESA. With that principle, I emphatically concur. Unfortunately, however, HR 2275 cannot be reconciled with that principle. The requirements described above for the gathering of information judged unnecessary, worthless, and wasteful by wildlife management professionals would be sufficient by themselves to demonstrate the flawed science at the root of HR 2275. Unfortunately, however, that is but one of many such examples, and hardly the most significant.

A few other examples will reinforce the point that HR 2275 is so flawed in its understanding of science that it makes a mockery of the Republican policy statement. First, despite the drafters' evident desire to interject "peer review" into a variety of decision-making processes, it is clear that they have only a superficial understanding of how peer review actually works. Proposed section 4(b)(3)(A)(iii) (page 75, lines 8-14) requires anyone who petitions for the listing of a species to submit an affidavit identifying "the names of the persons performing the peer review" of any "literature from scientific or other journals" submitted with the petition. That requirement is truly impossible to fulfill. Scientific journals do not divulge the identities of peer reviewers, either to the authors of the articles being reviewed or to others. Essential to the integrity of

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the peer review process is its confidentiality. HR 2275 makes the impossible demand that that confidentiality be breached.

Another eye-popping example is the requirement of proposed section 4(b)(1) (page 59, lines 1-4) that, in making listing determinations, the Secretary must "accord greater weight, consideration, and preference to empirical data rather than projections or other extrapolations developed through modeling." This is exactly the approach Congress rejected in 1982 when it recognized that the health of bobcat populations could better be determined inferentially by extrapolating from data regarding habitat availability, visits to scent posts, hunter trapping success, animal weight, and the like, than from direct measures of population size. Furthermore, the effect of this curious statutory requirement is to relegate the mathematical science of statistics to a second class status. Very frequently, empirical data will only have utility if their statistical significance is known. Determining statistical significance, however, requires the application of mathematical models built on assumptions (the most common of which is that a normal distribution of data will be along a bell-shaped curve). The bill, therefore, requires the Secretary to treat conclusions drawn from the use of scientifically sound statistical tests as of lesser weight than those drawn from often nearly-meaningless raw data.

A familiar example illustrates the utter folly of this approach. Imagine a farmer who is trying to decide whether to incur the considerable expense of hiring a crop duster to apply a pesticide to his field. To make that decision intelligently, he needs to know the extent to which a pest infestation exists. To check every individual plant in the field is impossible (and unnecessary). Instead, a random sampling of a few sites gives him the information upon which to extrapolate to a conclusion about the extent of infestation overall. He may decide to spray thousands of acres on the basis of having actually examined a few square meters of land. He may incur an expense of thousands of dollars on the basis of having seen only a dozen or fewer individuals of a particular pest. Decisions such as these are not only rational (and scientific), but they are made by farmers every day. HR 2275, however, would handicap the Secretary's ability to engage in similar rational decision-making. It would instead force him to base his conclusions primarily on the empirical data (the dozen individual pests on a few square meters of land), and only secondarily on statistically sound extrapolations from that data. Once again, therefore, the bill does exactly the opposite of what the Republican policy statement intends: it frustrates, rather than furthers the use of sound science.

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Another example that unmasks the bill's disregard of sound science concerns recovery plan goals. The only peer-reviewed study of recovery plan goals, a study that recently appeared in the American Association for the Advancement of Science's authoritative journal, Science, concluded that recovery plan goals have generally been set too low and are insufficient to assure meaningful recovery. In direct opposition to that conclusion, however, section 903(c) of HR 2275 arbitrarily prohibits, for a period of up to three and a half years, the Secretary from "requir[ing] any increase in any measurable criterion contained in ... a final recovery plan" already in existence. The only changes the Secretary can make under this provision are changes that lower, rather than raise, recovery plan goals. That restriction effectively prevents the Secretary from doing the very thing that the Science report indicates is clearly necessary.

On other issues addressed in this bill, the nation's most prestigious scientific institution, the National Academy of Sciences, has already given Congress the benefit of its advice. This bill, however, consistently chooses to ignore that advice. In a 1990 report, Decline of the Sea Turtles, the Academy emphatically affirmed the scientific need for regulations requiring shrimp fishermen to use gear that would reduce the drowning of sea turtles in shrimp nets. This bill repudiates that scientific conclusion and eliminates the legal basis for those regulations. Earlier this year, the Academy released another, more comprehensive report, Science and the Endangered Species Act. The bill before us today either ignores or rejects most of the conclusions and recommendations of that report. Finally, the Academy is expected soon to release a third report, this one on the problem of salmon in the Pacific Northwest. I expect that report will address the role of hatcheries in salmon conservation. I doubt, however, that it will contain the same uncritical enthusiasm for hatcheries evident in this bill. The overwhelming weight of scientific opinion today is that hatcheries have exacerbated the decline of wild salmon stocks in the Pacific Northwest. The bill, however, perpetuates the scientifically discredited 1930's view of hatcheries as an important part of the solution to the salmon problem. In short, the bill not only fails to fulfill the promise of the first principle in the Republican policy statement, but it clearly repudiates it.

Attached to this testimony is an article that recently appeared in the journal Science. In it, the foundations for a scientifically sound policy for protecting endangered species are described. The authors of this short article include the President-elect of the American Association for the Advancement of Science, Dr. Jane Lubchenko, the world's preeminent authority in the study

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of biological diversity, Dr. E.O. Wilson, one of the foremost authorities on chemical ecology, Dr. Thomas Eisner, my colleague Dr. David Wilcove, and myself.

#### 4. Certain provisions of HR 2275 simply make no sense.

Whether through careless drafting or purposeful intent, certain provisions of HR 2275 simply make no sense. Take, for example, section 10(a)(6)(B) (page 46, lines 11-18), which requires the Secretary to issue an endangered species educational display or propagation permit to a person on the basis of the fact that such person has previously been authorized to kill blackbirds. This provision directs the Secretary to issue a permit (it does not say what kind of permit, but since the heading for the provision is "educational or propagation permits," that is presumably what is intended) to a qualified person who "has at least 10 permits in the aggregate issued pursuant to this Act or the other laws listed in subparagraph (H)." Among the many laws identified in subparagraph (H) is the Migratory Bird Treaty Act, and among the many permits it authorizes are permits for controlling depredation by blackbirds. Thus, the farmer who has been plagued by blackbirds and who has received at least ten permits to shoot them will doubtless be surprised to learn that he now is entitled to a permit to begin captive rearing of giant pandas, chimpanzees, and other species.

As another example, states can be delegated the authority of the Act with respect to endangered plants even though they have no conservation programs or legal authority to protect such plants. Proposed section 6(c) (page 133, lines 10-16) authorizes the Secretary to delegate "the authority contained in this Act with respect to species of fish, wildlife and plants" if it establishes and maintains an "adequate program." To have an "adequate program," a state must meet specified criteria (page 134, lines 3-25, and page 135, lines 1-21) that pertain solely to wildlife. Thus, a state that meets these criteria for wildlife, and that has no programs or legal authority for the protection of rare plants, can be delegated the authority of the Act for both wildlife and plants. How delegation of authority to a state affects the Act's prohibition against taking endangered species is the subject of two mutually inconsistent provisions. Proposed section 6(c)(2) (page 135, lines 22-25, and page 136, lines 1-3) states that such prohibition is unaffected by delegation to a state. Proposed section 6(g)(2)(A) (page 140, lines 17-18) says exactly the opposite.

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### **5. Conclusion**

HR 2275 represents neither sound science nor effective conservation. The practical consequences described above are just a few of many that could have been offered to make the point that the bill strips needed protection from many highly imperiled species and subjects the administrators of the endangered species program to requirements that are unnecessary, needlessly complex, wasteful of scarce conservation dollars, without scientific foundation, and inconsistent with the professed goal of improving the protection of endangered species. Moreover, HR 2275 is laden with inconsistencies and ambiguities that will invite repeated litigation over how the Act's administrators choose to resolve them. The flaws in this bill are many and serious. If the committee is willing to take the time to address them, a much better, more effective bill could emerge.



## Building a Scientifically Sound Policy for Protecting Endangered Species

Thomas Eisner, Jane Lubchenco,\* Edward O. Wilson,  
David S. Wilcove, Michael J. Bean

The primary legislative tool for protecting imperiled species in the United States is the Endangered Species Act (ESA) of 1973. The pending reauthorization of this law has sparked a fierce debate on the science, economics, and ethics of protecting vanishing species; the outcome of the debate will influence domestic and international conservation policies for years. Recent advances in our scientific understanding of biodiversity have underscored the importance of species protection for human welfare. Each species, by virtue of its genetic uniqueness, is the source of information we can learn from no other source. Species can provide us with novel molecules and new understanding of genetic capacities, which can be used to fashion new agricultural products, medicines, and other chemicals of direct benefit to humans. Indeed, prospecting for biogenetic information could well become a major scientific exploratory venture of the

21st century. Species also provide essential ecological services to humanity by regulating climate; cleansing water, soil, and air; pollinating crops; maintaining soil fertility; and performing other life-sustaining functions (1).

Despite the importance of species to people, a significant fraction of the biota of the United States is at risk of extinction or already lost. Somewhat in excess of 100,000 native species (terrestrial and freshwater) have been described from the United States, including 22,750 vascular plants; 3110 vertebrates; and (very roughly) 75,000 insects. Within those taxa most carefully classified and studied to date, about 1.5% of the species alive at the turn of the century are now considered to be certainly or probably extinct. Extinction estimates range from 0 in reptiles and gymnosperms to 8.6% in freshwater mussels. In these groups, the overall percentage of species ranked as imperiled or rare is 22.2%, with a peak of 60.1% in freshwater mussels (2).

Recent scientific discoveries and assess-

ments provide valuable insights about endangered species protection (3). We focus on three issues: (i) Does the act protect the right elements of diversity? Should the limited resources available for conservation be targeted toward the protection of higher ecological levels of diversity, such as ecosystems, rather than toward the protection of individual species? Should protection encompass categories below the species level (that is, to subspecies and populations)? (ii) Have decisions to classify particular plants and animals as endangered been based on sound science? (iii) Can ecological and biogeographic knowledge be used to increase the efficiency of the ESA?

### What Should Be Protected?

Although the stated purpose of the ESA is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved," it attempts to do so by protecting individual species, subspecies, and, in the case of vertebrates, distinct population segments. This focus on individual taxa has come under increasing criticism from those who believe it to be an inefficient and ineffective means of safeguarding biological diversity (4). The sheer number of species present in most regions of the country and the lack of ecological information about most species are cited as the primary reasons for shifting conservation activities to higher levels of biological organization. There are four strong reasons for not abandoning the traditional focus on individual species. (i) Because ecosystems are less discrete entities, species provide a more objective means of determining the location, size, and spacing of protected areas necessary to conserve biodiversity. (ii) Population declines of individual species (for example, freshwater mussels, peregrine falcons) may indicate the presence of stress to an ecosystem before it is obvious system wide. (iii) Individual species are the source of new medicines, agricultural products, and genetic information useful to humans. (iv) Although ecological services are provided by ecosystems, individual species often play pivotal roles in the provision of these services (1). Efforts to protect declining species are consistent with the goal of protecting ecosystems. We

strongly concur with recent reports from the National Research Council (NRC) and the Ecological Society of America that emphasize the need to protect both species and habitats; neither is a complete substitute for the other (3).

Subspecies and distinct population segments of vertebrates have been protected by the ESA since its inception and currently constitute about 20% of listed taxa (5). Legislation to reduce protection for units below the species level has been introduced in Congress and will be debated in the forthcoming reauthorization. Advocates of this measure argue that it will reduce the number of ESA-related conflicts by reducing the number of listed taxa and will allow the federal government to focus limited resources on the protection of full species. Although sympathetic to both concerns, we believe the current policy is sound because it facilitates the protection of genetic diversity within species and encourages people to act earlier to protect declining species, rather than waiting until all subspecies or populations of a given species are imperiled. Moreover, as noted in the NRC report, there is no scientific justification for protecting populations only of vertebrates. Plants, for example, may differ chemically at the population level, reflecting genetic differences that may prove useful to humans (6).

### Criteria for Listing

Under the act, protected species are classified as either "endangered" or "threatened." The former includes "any species which is in danger of extinction throughout all or a significant portion of its range"; the latter includes "any species which is likely to become an endangered species within the foreseeable future. . . ." These vague statutory definitions provide the Secretary of the Interior with considerable latitude in determining which taxa warrant protection. Critics of the act allege that numerous taxa have been accorded protection based on incomplete or inaccurate information.

There is, however, little evidence that the Department of the Interior has abused its authority by listing taxa that are not at risk of extinction. Since passage of the ESA, only 4 of more than 950 protected taxa have been removed from the endangered list because subsequent studies showed them to be more abundant than previously thought (7). In fact, most species are listed when their populations are close to extinction. A recent study found that the median population sizes of taxa at time of listing were only about 1000 individuals for animals and 120 individuals for plants; at least 39 plants were listed when 10 or fewer

T. Eisner is in the Division of Biological Sciences, Cornell University, Ithaca, NY 14853, USA. J. Lubchenco is in the Department of Zoology, Oregon State University, Corvallis, OR 97331, USA. E. O. Wilson is in the Museum of Comparative Zoology, Harvard University, Cambridge, MA 02138, USA. D. S. Wilcove and M. J. Bean are at the Environmental Defense Fund, 1875 Connecticut Avenue, NW, Washington, DC 20009, USA.

\*To whom correspondence should be addressed.

individuals were known to survive (5).

### Where to Protect Endangered Species?

The fear that the presence of endangered species will lead to restrictions on the use of private lands has spawned much of the backlash against the ESA. It is reasonable, therefore, to ask how important private lands are to endangered species protection. Approximately 50% of listed taxa occur only on state and local public lands, tribal lands, and private lands (8).

The current pattern of federal land ownership is imperfectly suited to protecting biodiversity. Federal lands are concentrated in the western United States, including some areas with few imperiled species. Other regions that harbor high concentrations of localized, rare species contain little or no federal land. A carefully designed program of land exchanges between the federal government, other public landholders, and private landowners could improve the federal portfolio from a biodiversity perspective while providing private landowners with relief from their endangered species obligations and compensation in kind at little or no federal cost (9). Such a program would not negate the need to protect endangered species on private lands, but it would reduce the impact of doing so.

### Improving the Process

To argue that species conservation must remain a central goal in conservation is not to say how that goal should be met. New approaches with respect to both the science and economics of protecting biodiversity could significantly improve the performance of the ESA.

**Priorities for protection.** Some ecosystems are more endangered than others and contain a large number of species found nowhere else. Such hot spots are critical to conservation efforts because many (but far from all) endangered species will occur within them. It is therefore most effective for the Department of the Interior to give priority to the identification and protection of such places by expediting the formal listing of imperiled species associated with them. Examples in the United States include the rain forests of Hawaii, the sand ridge scrublands of central Florida, the desert wetlands of Ash Meadows in western California and eastern Nevada, and the rivers of the Cumberland Plateau and southern Appalachians (10). The 50 counties in the United States with the largest number of federally listed species, which together comprise about 4% of the nation's land area, contain populations of approximately 38% of all listed species (12).

When ecosystems are in a natural or

semimatural state, the number of species,  $S$ , expected to persist is systematically related to area,  $A$ . This species-area relationship is represented as  $S = cA^z$ , where  $z$  is usually in the range of 0.2 to 0.4, depending on the group and place. This relationship implies that a tenfold increase in habitat area approximately doubles the number of species within it. An important consequence of the species-area relationship is that lands protected on behalf of animals with large home ranges or low population densities will provide de facto protection for numerous other species with smaller home ranges or higher densities. The Department of the Interior can maximize the efficiency of its listing duties by targeting such taxa, commonly referred to as "umbrella species" (12). Other useful criteria for determining priorities for protection include the species' ecological role, taxonomic distinctiveness, and recovery potential (3).

**Incentives for protection.** The ESA relies on fines and jail sentences to punish or deter harmful conduct, but it provides no incentives to encourage or reward beneficial conduct, such as restoring habitats for endangered species. Changes in both the federal tax code and existing subsidy programs could be used to this effect.

For example, to pay federal estate taxes, inheritors of large land holdings are occasionally forced to sell, subdivide, or develop the property, resulting in loss of wildlife habitat. In cases where the property contains endangered species, the heirs could be given the opportunity to defer part of the estate taxes by entering into an endangered species management agreement with the Department of the Interior. In other cases, endangered species will persist on a site only if the habitat is actively managed on their behalf. The expenses associated with habitat management (for example, prescribed fire) are not currently tax deductible; if they were, more landowners would likely participate in efforts to recover endangered species.

The federal government funds a number of incentives programs aimed at encouraging farmers, ranchers, and small woodlot owners to protect wetlands, forests, soils, and water quality (13). To date, no effort has targeted these programs to areas where endangered species are likely to benefit. This could be done by simply modifying the criteria for eligible lands or by paying a premium for lands harboring endangered species. Such measures cannot wholly supplant the regulatory requirements of the ESA, but they can limit the need for, and increase the flexibility of, such requirements.

The ESA is scientifically sound. A continued focus on species protection is necessary and appropriate and complements the protection of ecosystems. The effectiveness of the act can be improved by emphasizing

the protection of hot spots and umbrella species, by protecting disappearing species, and ecosystems earlier, and by supplementing the law's regulatory requirements with economic incentives.

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- Data on numbers of species at risk of extinction or recently extinct were taken from the National Heritage Central Databases of The Nature Conservancy, June 1992. The count for the total number of known species is only an estimate, due to the imperfect nature of summary databases for U.S. birds. Our estimate is a conservative one, especially in view of the lack of clear estimates for groups such as fungi and microorganisms. See also E. T. LaFoe, G. S. Fams, C. E. Puckett, P. D. Doran, M. J. Mac, Eds., *Our Living Resources: A Report to the Nation on the Distribution, Abundance, and Health of U.S. Plants, Animals and Ecosystems* (U.S. Department of the Interior, National Biological Service, Washington, DC, 1995).
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- J. F. Franklin, *Ecol. Appl.* 3, 202 (1993); G. Easterbrook, *A Moment on Earth* (Wiley, New York, 1995).
- D. S. Wilcove, M. McMillan, K. C. Winston, *Conserv. Biol.* 7, 87 (1993).
- T. Esner, *BioScience* 42, 578 (1992).
- The four taxa include three plants (*Turam.*, *macdougalii*, *Astragalus perennis*, and *Hedimolopis apiculatum*) and one amphibian (Florida population of *Hyla andersoni*).
- B. A. Stein, T. Broden, R. Warner, in *Our Living Resources* (see [2]).
- An example is the Collier land exchange approved by Congress in 1988, in which the Department of the Interior will trade 111 acres in Phoenix, Arizona, for 122,000 acres of private land in Florida. The Florida land will become part of Big Cypress National Preserve and two national wildlife refuges and will protect habitat for the endangered Florida panther. Land exchanges are complex; for recommendations, see National Research Council, *Setting Priorities for Land Conservation* (National Academy Press, Washington, DC, 1993).
- D. W. Lowe, J. R. Matthews, C. J. Mossley, *The Official World Wildlife Fund Guide to Endangered Species of North America* (Beacham, Washington, DC, 1990).
- Data on county occurrences of threatened and endangered species obtained from U.S. EPA's Office of Pesticide Programs' Endangered Species-By-County List, 31 March 1995. Our analysis is based on known occurrences of federally listed species in each county.
- The northern spotted owl (*Strix occidentalis caurina*) is an example of an umbrella species. One study concluded that 280 species of plants (vascular and nonvascular) and vertebrate animals closely associated with old-growth forests in the Pacific Northwest would be protected in a reserve system established for the owl. See J. Thomas et al., "Viability assessments and management considerations for species associated with late-successional and old-growth forests of the Pacific Northwest" (USDA Forest Service, Washington, DC, 1993).
- Examples of such programs include the Conservation Reserve Program, Wetlands Reserve Program, Water Quality Incentives Program, and Forest Legacy Program.
- We thank M. McMillan for data analyses and A. R. Blaustein, T. Janelos, S. A. Levin, T. E. Lovejoy, G. Orans, D. Policansky, G. B. Rabb, J. Rechner, and G. D. Trowbridge for helpful comments.

**Supplemental sheet for the Endangered Species Act testimony of:**

Michael J. Bean  
 Chairman, Wildlife Program  
 Environmental Defense Fund  
 1875 Connecticut Avenue, NW, Suite 1016  
 Washington, DC 20009  
 (202) 387-3500

## Summary of Testimony:

1. The Practical Consequence of HR 2275 Will be the Denial of Effective Protection for Many of Our Most Imperiled Wildlife Species.
  - A. Smugglers of rhino horn, elephant ivory, and other wildlife contraband will find it much easier to thwart law enforcement efforts.
  - B. The oil industry will no longer be required by the Act to take any measures to avoid killing sea turtles and other endangered species in its outer continental shelf operations.
  - C. To continue on the successful path toward recovery of the bald eagle, numerous costly and unnecessary procedures must be carried out.
  - D. The governments of Rwanda, Burkina Faso, Uganda, Tanzania, Burundi, Angola, and more than 20 other African nations would all have to consent in writing to strengthen protection for the African elephant by moving it from the threatened list to the endangered list.
2. HR 2275 Violates Basic Principles of Wildlife Management.
3. HR 2275 Violates the First Principle of the Republican Policy Statement on the ESA: Insistence Upon Sound Science.
4. Certain Provisions of HR 2275 Simply Make No Sense.
  - A. HR 2275 requires the Secretary to issue an endangered species educational display or propagation permit to a person on the basis of the fact that such person has previously been authorized to kill blackbirds.
5. States can be delegated the authority of the Act with respect to endangered plants even though they have no conservation programs or legal authority to protect such plants.

AMERICAN  
FOREST &  
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ASSOCIATION

1111 16TH STREET NW, SUITE 600 WASHINGTON, DC 20036  
PHONE 202 463-2700 DEPARTMENT FAX 202 463-1040

OFFICE OF THE PRESIDENT

TESTIMONY OF W. HENSON MOORE  
President and CEO  
American Forest & Paper Association

On Behalf of  
American Forest & Paper Association  
and  
Endangered Species Coordinating Council

on  
H.R. 2275  
"Endangered Species Conservation and Management Act of 1995"

September 20, 1995

Before the  
Committee on Resources  
United States House of Representatives

## STATEMENT W. HENSON MOORE

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today on H.R. 2275, the "Endangered Species Conservation and Management Act of 1995."

I am W. Henson Moore, President of the American Forest & Paper Association. AF&PA is the national trade association of the forest, pulp, paper, paperboard, and wood products industry. We represent approximately 450 member companies which grow, harvest and process wood and wood fiber; manufacture pulp, paper and paperboard products from both virgin and recovered fiber, and produce solid wood products. The association is also the umbrella for more than 60 affiliate member associations that reach out to more than 10,000 companies. AF&PA represents an industry which accounts for more than eight percent of total U.S. manufacturing output. It directly employs about 1.4 million people and ranks among the top 10 manufacturing employers in 46 states.

I am also here today representing the Endangered Species Coordinating Council. The ESCC is a coalition of more than 200 companies, associations, individuals and labor unions involved in ranching, mining, forestry, manufacturing, fishing and agriculture. A current list of members is attached. We seek to provide workable procedures and positive incentives in the Endangered Species Act which promote conservation of wildlife in a way that considers economic factors and respects the rights of private property owners without impairing its fundamental commitment to protect listed species.

First, I would like to thank Chairman Don Young and Rep. Richard Pombo, the Chairman of the Committee's ESA Task Force for introducing H.R. 2275 which will bring much needed changes to the operation of the Endangered Species Act. We fully support your efforts. We also appreciate your efforts to provide additional incentives and funding for endangered species conservation by introducing H.R. 2284 to establish a "Conservation Habitat Reserve Program;" H.R. 2285, the "Theodore Roosevelt Commemorative Coin Act" for funding purposes; and H.R. 2286, which sets out several tax incentive programs.

Congress enacted the Endangered Species Act to protect endangered and threatened species, a goal which we support. We believe the principles behind the Endangered Species Act represent those qualities which make our society the finest in the world. However, believing in these principles and writing a law that works are two entirely different matters. Frankly, this law is broken and does not work.

As its operating premise, the Endangered Species Act mandates protection of the species to the point of its recovery, without regard to the interaction of these steps with the rest of society. Humans are part of the diversity of nature and are one of the natural elements that is capable of causing changes, sometimes dramatic change, in the environment. Humans have modified the natural environment in North America for hundreds, if not thousands, of years. A recent example is the virtual elimination of fire

from the environment in the Southeast. A number of species, some of which are now listed under the Endangered Species Act, were dependant on these fires for their existence. It would be sheer folly to require by law that these species be recovered because that would mean the return of the widespread fires upon which the species thrive. Yet, that is the literal mandate of the Endangered Species Act.

H.R. 2275 contains several key provisions which we believe are essential to provide for a workable Endangered Species Act:

- ▶ giving the Secretary of the Interior the discretion to choose the appropriate conservation objective for each listed species;
- ▶ providing a compensation mechanism for private landowners;
- ▶ improving the quality of the science to be used for listings, critical habitat designations and consultations;
- ▶ bringing efficiency and fairness to the consultation process;
- ▶ defining "take" in a manner that provides certainty and avoids speculation;
- ▶ recognizing the important multiple use values of national forest lands and public lands; and
- ▶ establishing incentives for private landowners to work with conservation rather than against it.

**Secretarial Discretion.** Under the current law, the Secretary of the Interior must strive to recover each and every species that has been listed as endangered or threatened, currently over 900 in the United States alone. The current law does not allow the Secretary to take into account biological factors, available financial and other resources, or the social and economic impacts. Rarely, if ever, does the Secretary consider alternative methods of recovery, but rather is compelled to pursue recovery "whatever the cost."

Eliminating this concept will allow the Secretary to allocate scarce resources where they will do the most good and to alleviate some of the more outrageous social and economic dislocations. These will be accomplished in three ways. First, the Secretary must actually assess the biologic condition of the listed species, the cost of management as compared to resources realistically available, the social and economic impacts of species management and other factors. Second, the Secretary may select a conservation goal that is consistent with these assessments. Finally, the Secretary must develop alternative strategies to achieve the conservation objective, which will allow further adjustment for available resources and impacts.

An important provision in the bill sets a baseline conservation objective which requires the Secretary to protect all listed species from intentional take and commercial

exploitation. We would expect this authority to be used only in extreme cases where intervention is considered inappropriate.

**Compensation.** The Fifth Amendment to the Constitution of the United States guarantees every citizen just compensation if the government takes their property for a public purpose. In 1973, Congress declared protection of endangered species to be a proper public purpose. Unlike other environmental laws which merely regulate how activities are conducted on private lands, the presence of listed species on your land often means that you are unable to conduct any activity. It is unfair – it is unAmerican – to impose the cost of carrying a public purpose on a few unlucky citizens.

H.R. 2275 recognizes the inherent unfairness in this practice and resolves this unconstitutional burden by establishing a compensation mechanism for landowners whose property loses at least 20% of its value as a result of the operation of the Endangered Species Act. A statutory compensation requirement gives landowners the knowledge that if all else fails, the government will be responsible for the public purpose of species protection. This will allow those who believe that they have a stewardship responsibility, as our industry does, to work with the law as much as possible. This provision is essential for the other incentive measures to work.

**Quality Science.** We applaud the decision to continue to assure that listings are based on science. While we have disagreed on occasion with the science that has been used, we nonetheless believe the listings must be kept in the scientific arena. However, H.R. 2275 provides several important and needed improvements:

- ▶ a peer review process for listings, delistings, critical habitat designations and consultations;
- ▶ an emphasis on empirical data over models;
- ▶ a definition of "best scientific and commercial data available;"
- ▶ identification, and public availability, of data used for the determination;
- ▶ identification, and subsequent collection, of data which is necessary for the continued validity of the determination.

The Administration has identified several of these provisions as important elements of competent implementation of the Endangered Species Act. Done properly, they should not cause any delay in the listing process.

H.R. 2275 contains two other amendments which will improve the public acceptance that credible science is in fact being used. The first is the elimination of deadlines for the review of petitions to list species. For too long, petitions have driven the priorities for review of species precisely because the Secretary must place any species that is the subject of a petition at the top of the list for review. H.R. 2275 also sets standards for the information that must be set out in a petition.

Second, H.R. 2275 restricts the listing of population segments to Congress. No longer may the Secretary engage in the often controversial practice of listing a population of a species just because it lives in the United States, even though it is abundant elsewhere. The Secretary will have the authority, of course, to recommend that Congress designate by law that a particular population is of "national interest" and should be listed under the Endangered Species Act or have its own statutory protections. This has been done in the past for that great symbol of America, the bald eagle. Moreover, species' populations which are currently listed, such as the populations of bald eagle, grizzly bear and grey wolf in the lower 48 states, would continue to be listed.

**Consultation on Federal Actions.** H.R. 2275 addresses three issues which have caused particular problems for industry: delayed and repetitive consultations; the status of "applicants" and programmatic consultations. In each of these areas, we are pleased that the Committee's Endangered Species Act Task Force crafted workable solutions after hearing testimony throughout the nation.

For delayed and repetitive consultations, the bill sets a strict time limit for completion and eliminates multiple consultations if critical habitat is subsequently designated. The Fish and Wildlife Service has stated that most consultations are currently completed within 90 days, so this strict time limit should have little impact other than to act as encouragement for the agency to continue its good work. Similarly, the Service has recognized that the consultation on jeopardy to the species is the critical analysis.

H.R. 2275 provides real opportunities for applicants to have a substantive role in the consultation process. Not all applicants will avail themselves of this, of course, but we thank the Task Force for recognizing that statutory support is needed for those applicants who desire to participate.

Finally, the bill eliminates the monkey wrench which the U.S. Court of Appeals for the Ninth Circuit has thrown into the management of the national forests. In its Pacific Rivers Council decision (30 F.3d 1050), that court ruled that all timber harvesting within a forest must cease and no sales may be held when a new species is listed until the Forest Service consults with the Secretary on the forest management plan. In the Ninth Circuit's view, consultation on each sale is not sufficient. H.R. 2274 recognizes this as unnecessary red tape that has nothing to do with species protection.

**Redefining "Take."** The Endangered Species Act and regulations prohibit the "take" of a fish or wildlife species by any person. This is the principal means of regulating activity on private land. The statute defines "take" as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect," or any attempt to do so. The Secretary of the Interior defines "harm" in its rules as "an act which actually kills or injures wildlife ... [including] significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns ...."



Unfortunately, the courts and the Secretary tend to ignore the "actual injury" requirement in practice and base enforcement on speculation rather than fact. Thus, federal courts ordered the State of Hawaii in the Paliia cases to remove all feral sheep from state land because their presence might impede recovery of a bird listed under the Endangered Species Act and might lead to extinction of the bird 100 years from now. These expansive precedents serve as the basis of citizen suits against landowners under the Endangered Species Act. In Oregon, the Secretary has sued a private landowner alleging that proposed harvesting of a 71-acre patch of timber would "harm" a northern spotted owl pair that nests over one and a half miles away. However, the government has been unable to document owl use of the property in question. As a result of these interpretations, the public for many years has been under the misapprehension that the Endangered Species Act prohibits habitat modification of any kind.

Much of this speculative enforcement may be alleviated if the Secretary follows the letter of the Supreme Court's decision in Babbitt v. Sweet Home Chapter of Communities for a Great Oregon. The Supreme Court held that habitat modification by itself does not violate the Endangered Species Act, but must be the proximate cause of an actual death or injury to a member of a listed species. Justice O'Connor, in her concurring opinion, emphasized that the death or injury may not be speculative or hypothetical. Justice O'Connor also invited Congress to revisit this issue if further clarification is needed.

The Task Force has accepted Justice O'Connor's invitation and redefined "harm" in the statute itself. The new definition states more strongly than the Court was willing to that there must be a direct action causing an actual death or injury to a member of a listed species. Neither the Secretary nor a court may find "take" based on inaction, on hypothesis, or on speculation.

**Multiple Use/Diversity.** Congress has stated twice in the past thirty-five years that the national forests must be managed for multiple use. In the Multiple Use-Sustained Yield Act of 1960 and again in the National Forest Management Act of 1976, Congress emphasized that no single use of the forest, whether it be timber harvesting or preservation, should direct forest management (unless ordered by a statute such as the Wilderness Act), but rather management must recognize and balance a number of uses, including wildlife.

H.R. 2275 continues this policy in the establishment of the "National Biological Diversity Reserve" on federal lands within units of the single-use, conservation systems such as national parks, wildlife refuges and designated wilderness areas. Wildlife concerns will continue to be part of multiple use management on national forest lands but diversity considerations on those lands are subordinate to the Reserve. The bill also recognizes that while it is appropriate to adjust forest management where a listed species is likely to be jeopardized, other wildlife concerns should remain one of several multiple use considerations.

With respect to establishment of the "National Biological Diversity Reserve," we strongly recommend that the Committee proceed with caution. Too often, new programs dedicating Federal lands to a particular purpose have, over time, grown well beyond the original intent. Moreover, it is not clear whether the bill protects existing resource permittees who currently conduct activity on some conservation system lands.

**Incentives.** Encouraging voluntary cooperation in species conservation is critical for a viable endangered species program. Too often, the law and the Fish and Wildlife Service treat private landowners as the enemy rather than the solution. We are pleased to see that not only does H.R. 2275 contain numerous provisions designed to encourage landowner cooperation but that Task Force Chairman Richard Pombo has introduced two other bills for this purpose: H.R. 2284, containing several tax incentive proposals; and H.R. 2286, containing a conservation habitat reserve program.

An important element of H.R. 2275 is the recognition that money is not the only incentive. Regulatory relief to remove the adversarial nature of the law also provides incentives for cooperation. Thus, the bill provides for voluntary private consultation, technical assistance to landowners, cooperative management agreements and land exchanges in addition to habitat reserve grants.

**Conclusion.** I have summarized just a few of the needed changes to the Endangered Species Act which will transform this statute from the "pit bull of environmental laws" to a law that actually achieves wide support for species conservation. I should also note that we support the provisions in the bill which greatly enhance the role of the States in this effort, including the opportunity to obtain delegation of program management.

Based on our experience over the last 22 years, this law has caused unnecessary economic and social dislocations while at the same time has recovered few species. We support H.R. 2275 and believe it will remedy these problems within the framework of the original law.

On behalf of the American Forest & Paper Association and the Endangered Species Coordinating Council, I appreciate the opportunity to offer our views on H.R. 2275, the "Endangered Species Conservation and Management Act of 1995." I would be happy to answer any questions you may have.

Endangered Species Coordinating Council Members

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*National Committee*

American Forest & Paper Assn	International Assn of Bridge, Structural and Ornamental Iron Workers
American Sheep Industry Assn	International Brotherhood of Painters and Allied Trades
American Soybean Association	International Longshoremen's Assn
National Assn of Manufacturers	International Union of Operating Engineers
National Assn of Wheat Growers	International Woodworkers of America
National Cattlemen's Assn	United Paperworkers International Union
National Corn Growers Assn	Utility Workers Union of America
National Cotton Council	United Brotherhood of Carpenters and Joiners of America
National Fisheries Institute	Assn of Western Pulp and Paper Workers
National Mining Association	
Coalition of Oil & Gas Associations	



ACCORD (Arizona Citizens Coalition Resource on Decisions)	Brownlee Lumber, Inc.
Addoco, Inc.	California Cattlemen's Assn
Alabama Forestry Assn	California Forestry Assn
Alabama Lamb, Wool & Mohair Assn	California/Oregon Miners Assn
Alaska Forestry Assn	California Wool Growers Assn
Alaska Mining Assn	Cardaco - An Alcoa Co.
Alaska Wool Producers Assn	Challenger Pallet and Supply, Inc. - Id.
Allegheny Hardwood Utilization Group	Cherry Hill Wood Products, Inc.
Alpine Engineered Products	Clinton Pallet Co.
American Iron Ore Assn - Cleveland, Ohio	Coastal Lumber Co.
American Plywood Assn	Coast Range Conifers
American Pulpwood Assn	Colorado Cattlemen's Assn
American Sheep Industry Women	Colorado Mining Assn
American Wood Preservers Institute	Colorado Timber Industry Assn
Amos-Hill Associates	Colorado Wool Growers Assn
Appalachian Hardwood Manufacturers	Conex Forest Products
Anstokraft, Inc. - Jasper, In., Crossville, Tn.	Continental Lime Inc.
Arkansas Forestry Assn	Culhane, John
Arizona Cotton Growers Assn	Delaware Sheep & Wool Producers
Arizona Wool Producers Assn	DenPak Building Products, Inc.
Arizona Cattlegrowers Assn	Denver Reel & Pallet Co.
Associated Oregon Loggers, Inc.	Dixon Lumber Co.
Atlas Pallet Corp.	Douglas Timber Operators
Backcountry Horsemen of Washington, Inc.	Duo-Fast Corp.
B.A. Mullican Lumber & Manufacturing	East Perry Lumber Co.
B.L. Curry & Sons, Inc.	Econotool
Balfour Land Co.	Export Corporation
Bell Fibre Products	Farm Credit Bank of Texas
Bibler Brothers, Inc.	Florida Cattlemen's Assn
Black Hill Regional Multiple Use Coalition	Florida Forestry Assn
Black Hills Forest Resource Assn	Florida Sheep Industry
	Forest Farmers Association

Garnett Co.  
 Georgia Cattlemen's Assn  
 Georgia Forestry Assn, Inc.  
 Georgia Mining Assn  
 Georgia Sheep & Wool Producers  
 Granite Hardwoods, Inc.  
 Groves Pallet Co.  
 Haag, William S. - Kodiak, Alaska  
 Hallwood Ent.  
 Hardwood Manufacturers Assn  
 Hurder, Paul  
 Idaho Cattle Association  
 Idaho Mining Assn  
 Idaho Wool Growers Assn  
 Ihlo Sales and Imports  
 Illinois Lamb & Wool Producers  
 Independence Mining Co.,- CO  
 Indiana Sheep Industry Assn  
 Industrial Pallet & Packaging Co.  
 Intermountain Forestry Industry Assn  
 International Association of Drilling Contractors  
 Interstate Pallet Exchange, Inc.  
 Iowa Cattlemen's Assn  
 Isaacson Lumber Company  
 Jay Dee Transport Co.  
 Johnson Industries  
 Kentucky Beef Cattle Assn  
 Kentucky Forest Industries Assn  
 Kentucky Sheep & Wool Producers  
 Kitchen Cabinet Manufacturing Assn  
 Kingsberry, Dennis  
 Lake States Women in Timber  
 Lavelle Building Materials  
 Lewis, L.G. and Bette - Richmond, VA  
 Litco Intl  
 Louisiana Forestry Assn  
 Louisiana Sheep Producers Assn  
 Love Box Co.  
 Mr. & Mrs. Gerald Lucas  
 Lumberman's Assn of Texas  
 Manufacturers Wholesale Lumber  
 Mason, Tad - Redding, CA  
 Marriott's Incorporated - Canyonville, Or.  
 Massachusetts Federation of Sheep Assn  
 Menillat Industries, Inc.  
 Mezquite Maderas Procesados (NWPCA)  
 Michigan Assn of Timberman  
 Michigan Cattlemen's Assn  
 Michigan Forestry Assn  
 Michigan Resource Alliance  
 Michigan Sheep Breeders Assn  
 Mid-America Lumbermen Assn  
 Mid-Ohio Wood Products  
 Mississippi Cattlemen's Assn  
 Mississippi Forestry Assn  
 Mississippi Sheep Breeders Assn  
 Missouri Cattlemen's Association  
 Missouri Forest Products Assn  
 Missouri Sheep Producers  
 Mitchell Veneers  
 Montana Stockgrowers Assn  
 Montana Wool Growers Assn  
 Melvin Morris, Hawthorne, Cal.  
 Mullican Jr., Mr. and Mrs. Bill A.  
 National Lamb Feeders  
 Nat'l Lumber & Building Material Dealers Assn  
 National Particleboard Assn  
 National Wood, Window & Door  
 National Wooden Pallet & Container Assn  
 Nebraska Cattlemen's Assn  
 Nebraska Sheep Council  
 Nevada Cattlemen's Assn  
 Nevada Wool Growers  
 New Hampshire Sheep & Wool Growers  
 New Jersey Wool Growers Assn  
 New Mexico Cattle Growers  
 New York Empire Sheep Producers Assn  
 Nor-Cal Moulding Co.  
 Noranda Exploration  
 North American Wholesale Lumber Assn  
 North Carolina Forestry Assn  
 North Carolina Sheep Producers  
 North Dakota Lamb & Wool Producers  
 North Dakota Stockmen's Assn  
 North Star Lumber, Inc.  
 Northeastern Loggers' Assn  
 Northern Michigan Veneers, Inc.  
 Northwest Forestry Assn  
 Northwest Reforestation  
 Northwestern Public Service Co.  
 Oelze, Kim  
 Oklahoma Sheep & Wool  
 Oregon Forest Industries Council  
 Oregon Forest Products Transportation Assn  
 Oregon Sheep Growers  
 Pallets Inc.  
 Pallox, Inc.  
 Paragon Corporation  
 Paul Bunyan Products  
 PFS/TECO  
 Pennsylvania Sheep & Wool  
 Porter's Wood Products, Inc.  
 Powell Industries, Inc.  
 Premdor  
 Professional Reforestation of Oregon, Inc. -  
     Coos Bay, OR  
 Public Lands Council  
 Putting People First  
 Ranier Pallet Corporation  
 Reel Lumber Service  
 Rhode Island Sheep Cooperative  
 Richardson Brothers Co.

Richins, Robert and Victoria  
 John Rock & Co.  
 Savanna Pallets, Inc.  
 Scott Pallets, Inc.  
 Sheep Producers Assn of Hawaii  
 Shipshewana Hardwoods  
 Sierra Care  
 Simplot Co.  
 Sonoma Pacific Co.  
 South Carolina Forestry Assn  
 South Carolina Sheep Industry Assn  
 South Dakota Cattlemen's Assn  
 Southeastern Lumber Manufacturers Assn  
 Southern Cypress Manufacturers Assn  
 Southern Forest Products Assn  
 Southern Oregon Timber Industries Assn  
 Southern Pallet, Inc.  
 Southern Timber Purchasers Council  
 StarMark Inc.  
 Stewards of Family Farms, Ranches & Forest  
 Tennessee Sheep Producers Assn  
 Texas Cattle Feeders  
 Texas Forestry Assn  
 Texas Sheep and Goat Raisers  
 Texas & Southwestern Cattle Raisers Assn  
 Texas Wildlife Assn  
 Thomasson Lumber Co.  
 Timber Producers Assn of Mich. and Wisc.  
 Tumac Lumber Co.  
 Tuolumne Chapter of Western Mining Council  
 United Forest Families  
 Upham & Walsh Lumber  
 Utah Cattlemen's Assn  
 Utah Mining Assn  
 Utah Wool Growers Assn  
 Virginia Sheep Federation  
 Washington Cattlemen's Assn  
 Washington Forest Protection Assn  
 Washington Wool Growers Assn  
 Western Forest Industries Assoc.  
 Western Mining Council  
 Western Pistachio Assn  
 Western Utah Mining Council  
 Western Wholesale Moulding, inc.  
 Western Wood Products Assn  
 West Virginia Cattlemen's Assn  
 West Virginia Shepherds Federation  
 Wisconsin Box Co.  
 Wisconsin Sheep Breeders Assn  
 The Wood Company of Oxford, Inc.  
 Wood-Mizer Products, Inc.  
 Woodgrain Millwork, Inc.  
 Wyoming Timber Industry Assn



## Center for Marine Conservation

STATEMENT OF WM. ROBERT IRVIN  
DEPUTY VICE PRESIDENT FOR  
MARINE WILDLIFE AND FISHERIES CONSERVATION  
CENTER FOR MARINE CONSERVATION

Before the

COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES

Concerning

H.R. 2275  
THE ENDANGERED SPECIES CONSERVATION AND MANAGEMENT ACT

SEPTEMBER 20, 1995

Mister Chairman and Members of the Committee, on behalf of the Center for Marine Conservation, I am pleased to have this opportunity to address the reauthorization of the Endangered Species Act (ESA) and, in particular, H.R. 2275, the Endangered Species Conservation and Management Act. In my testimony today, I will briefly review the ESA's record of success, address the serious shortcomings of H.R. 2275, and offer some suggestions for responsible improvements to the ESA which, unlike H.R. 2275, would address concerns that have arisen about the ESA while ensuring that it remains an effective law for conserving threatened and endangered species.

### THE ESA'S RECORD OF SUCCESS

Reauthorization of the ESA is one of the most important environmental issues facing this Congress. The ESA embodies a solemn commitment to ourselves, our children, and the world to pass on to future generations a rich heritage of biological diversity. Mister Chairman, what this Congress does to the ESA will be felt not only by those of us living today, but for generations to come.

At a time when some in this Congress are intent on rolling back progress made in protecting the environment over the past quarter century, we sometimes forget that this progress has been the result of strong bipartisan cooperation. The ESA was enacted by overwhelming bipartisan majorities in Congress and signed into law by a Republican President, Richard M. Nixon, in December 1973. It has been reauthorized three times, each time by large bipartisan majorities in Congress. Those reauthorizations were signed into law by Democratic President, Jimmy Carter, in 1978, and by Republican President Ronald Reagan in 1982 and 1988. The present Speaker of the House, Mr. Gingrich, has been counted among the ESA's strongest



Statement of Wm. Robert Irvin  
Center for Marine Conservation  
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supporters over the years. Many Members of this Committee, on both sides of the aisle, have been, and continue to be, strong supporters of the ESA. In short, Mister Chairman, maintaining a strong ESA is not a Republican issue or a Democratic issue—it is an American issue. This is born out by polls which continue to show strong support among the American people, regardless of party affiliation, for conserving endangered species and for the ESA.

Maintaining a strong ESA is important to our Nation because, in a very real sense, the ESA protects US. Nearly half of our prescription medicines are derived from plants and other wildlife. You may have heard of the rosy periwinkle, a flowering plant native to Madagascar, where much of its natural habitat has been destroyed. Now grown in nurseries, this innocuous plant is used to produce the drugs Vincristine and Vinblastine, which achieve a 99 percent remission rate in children suffering from leukemia. Closer to home, the bark of the Pacific yew tree, native to the endangered ancient forest ecosystems of the Pacific Northwest, produces taxol, which has proven to be the most effective treatment for advanced ovarian cancer. The Houston toad, an endangered species, produces alkaloids that may be useful in preventing heart attacks. Various stocks of salmon, including endangered sockeye salmon, contain Omega-3 fatty acids that can reduce high blood pressure and cholesterol and may be useful in treating arthritis. By protecting species like these and the habitats on which they and other species depend, the ESA preserves our ability to discover the medical miracles that lay hidden in nature.

The ESA's role in protecting biological diversity is also essential to agriculture. The world relies on only about 20 of the approximately 250,000 identified plant species for 90 percent of our food supply. Just 3 species -- corn, wheat, and rice -- provide half the world's food. This incredibly thin reed on which human survival depends is susceptible to devastating insect infestations and blights. One of the best ways to protect domesticated crops from such disasters is to crossbreed them with wild varieties. In the 1970's, a corn blight in the United States was controlled by crossbreeding domesticated corn with a wild variety from Mexico. In 1992, scientists protected domestic wheat from a harmful leaf rust by crossbreeding it with a wild variety from Brazil. By protecting species like the endangered Texas wild-rice, which could hold the key to controlling some future threat to domesticated rice crops, the ESA protects our ability to combat threats to agriculture and, ultimately, our survival.

Although the ESA has often been caricatured as a law that costs jobs, it is, in fact, a law that protects jobs. As Mr. Glen Spain of the Pacific Coast Federation of Fishermen's Associations will tell you today, in the Pacific Northwest, the ESA's protection of endangered salmon runs is essential to protecting a commercial and recreational fishing industry providing 60,000 jobs and \$1 billion annually in personal income to the region's economy. Even protecting less glamorous species, such as freshwater mussels, 43 percent of which are threatened, endangered, or extinct, protects jobs. Export of mussel shells from the United States to Japan for the cultured pearl industry is worth \$60 million annually to the American economy, supporting 10,000 jobs.

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The truth is, in the vast majority of cases, the ESA works, striking a balance between wildlife conservation and the needs of people. Studies by the World Wildlife Fund and the National Wildlife Federation, confirmed by the General Accounting Office, show that, between 1979 and 1993, of more than 150,000 projects reviewed for conflict with endangered species, 99.9 percent of the projects went forward.

In virtually every provision of the ESA, social and economic factors are taken into account. The ESA prohibits consideration of non-biological factors only in the decision whether to list a species as threatened or endangered. Economic and other impacts resulting from critical habitat designation must be taken into account, pursuant to Section 4(b)(1)(B)(2) of the ESA. Special regulations balancing species conservation with other concerns are issued pursuant to Section 4(d) of the ESA. Section 10(j) authorizes more flexible conservation programs for reintroducing nonessential experimental populations of endangered species to their former habitat. Sections 7 and 10 allow the Secretary of the Interior to issue incidental take permits, allowing people to harm or even kill individuals of a listed species in the course of some otherwise lawful activity. Section 7 requires the Secretary to suggest any available reasonable and prudent alternatives to a proposed federal action whenever the Secretary concludes that the action will jeopardize the continued existence of a listed species or result in the adverse modification or destruction of critical habitat. Regulations set forth at 50 C.F.R. § 402.02 implementing Section 7 require that reasonable and prudent alternatives must be "economically and technologically feasible." Even when there are no reasonable and prudent alternatives, Congress has provided an escape valve in Section 7 of the ESA, via the Cabinet-level Endangered Species Committee, which has the power to grant exemptions from the ESA when it determines that the benefits of a project outweigh the benefits of conserving a species. The fact that the Endangered Species Committee has only been called upon three times since its creation to resolve endangered species conflicts is eloquent testimony to the ESA's effectiveness in resolving conflicts short of an "either/or" decision.

Despite the heavy consideration given to economic and other concerns under the ESA, the ESA has still been quite successful in its central mission, saving species from extinction. According to the Department of the Interior in its 1992 Report to Congress on the ESA, 270 species are either stable or improving under the ESA's care. As the National Research Council concluded in its recent study, *Science and the Endangered Species Act*, "[T]he ESA has successfully prevented some species from becoming extinct. Retention of the ESA would help to prevent species extinction."

#### **H.R. 2275: A RECIPE FOR EXTINCTION**

H.R. 2275, the bill before this Committee, ignores the ESA's record of success and the recommendations of the National Research Council to retain a strong ESA. While there would still be an ESA following enactment of H.R. 2275, the ESA would exist in name only, stripped of its ability to effectively conserve threatened and endangered species. Indeed, H.R. 2275 is



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such a misguided bill that it is difficult to enumerate all of its flaws. Nevertheless, here are some of the bill's major problems:

1. H.R. 2275 Abandons the Central Goal of the ESA, Recovering Species.

Since 1973, the ESA has had a simple goal, to recover species to the point that the protections of the ESA are no longer necessary. While recovery may not be possible for all species in every circumstance, the law has emphasized the need to try. H.R. 2275 abandons this goal in Section 501, authorizing the Secretary of the Interior, without public input, to establish lower conservation objectives for threatened and endangered species.

Thus, the Secretary may decide that it is not worth the time and expense to seek to recover a particular species. Instead, the species will only be protected from direct, intentional killing or injury. Such a policy seems designed to highlight our ignorance rather than demonstrate our wisdom. While a future Secretary might find it difficult to write off the bald eagle, the Secretary may find it easier to abandon the recovery of an endangered reptile or amphibian. Of course, we now know that the Houston toad produces alkaloids that may be useful in fighting heart disease, so maybe it will be allowed to recover. But what of the Wyoming toad or the Plymouth redbelly turtle, of which we know very little? As Aldo Leopold, the father of scientific wildlife management so eloquently put it, "To keep every cog and wheel is the first precaution of intelligent tinkering." H.R. 2275 flies in the face of this wisdom.

2. H.R. 2275 Eliminates Crucial Protections for Listed Species, Particularly Marine and Foreign Species.

The ESA protects threatened and endangered species in a variety of ways, ranging from protecting individuals of a listed species from being directly taken to protecting the habitat upon which listed species depend for their survival and recovery. In addition, by requiring federal agencies to consult on their activities which may harm listed species and requiring others to obtain incidental take permits for their activities that adversely affect listed species, the ESA institutionalizes caution in our approach to threatened and endangered species. H.R. 2275 throws caution to the wind, undermining crucial protections for listed species on every level.

Section 301 of the bill raises numerous substantive and procedural hurdles must be overcome before any of the ESA's protections can be extended to a species. For example, the Secretary must identify and collect extensive data, consider captive-bred populations found in zoos and private hands, and, in the case of foreign species, obtain written concurrence from each nation in which a species proposed for listing is found. Indeed, even before the Secretary can exercise the authority to temporarily list a species on an emergency basis, there must be a significant likelihood that the species will be placed on an irreversible course to extinction within 2 years unless the species is fully protected under the ESA. With this requirement, the rarely used emergency listing authority will become rarer still.

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Once a species has run the gauntlet established by the bill for listing, numerous provisions of the bill operate to ensure that actual protection for the species will be minimized. Section 503 provides that, until a conservation plan has been completed, newly listed species will be protected only from direct, intentional take. After a conservation objective has been established and a conservation plan completed, Section 502 exempts individuals and federal agencies acting in accordance with those less protective plans from the take prohibition and interagency consultation requirements. In case that exemption is not broad enough, Section 205 authorizes the Secretary to exempt broad categories of activities from the take prohibition, through the issuance of general permits, patterned after those under Section 404 of the Clean Water Act which have led to the continued loss of valuable wetlands.

Section 102 provides that the normal protections of the ESA for listed and candidate species will be suspended in any area covered by a cooperative management agreement which the Secretary has determined will promote the conservation of a species. Thus, once a cooperative management agreement has been signed, the ESA's prohibition against taking endangered species, its requirement for interagency consultation, as well as any of the diluted conservation measures provided by H.R. 2275 will cease to operate in the area covered by the agreement. In short, the door will be open to the balkanization of what, until now, has been a successful national endangered species conservation program.

Section 507 reverses the long-standing regulatory practice of providing threatened species with the same protection afforded endangered species, unless circumstances dictate otherwise. Instead, the bill requires that threatened species be given less protection than endangered species, even in cases like that of the Inyo California Towhee, which had fewer than 200 individuals when it was listed as threatened, less than many endangered species. This short-sighted policy will, in the long run, likely result in more endangered species listings as earlier conservation of threatened species is blocked.

A. H.R. 2275 eliminates protection of endangered marine wildlife.

H.R. 2275's elimination of effective protections for endangered species is most apparent in the bill's special treatment of endangered marine wildlife. Section 201 effectively eliminates protection for threatened and endangered marine wildlife other than fish in U.S. waters out to the 200-mile limit, allowing incidental take of threatened or endangered whales, sea lions, seals, sea turtles, sea otters, or seabirds in the course of otherwise lawful activities in U.S. waters not designated as critical habitat. In other words, the oil industry will no longer be required to take precautions to prevent spills that might take whales or sea otters along the California coast. Shrimpers in the Gulf of Mexico will no longer be required to use turtle excluder devices (TEDs) to prevent sea turtles from drowning in their nets, returning to the days when according to the National Academy of Sciences, without TEDs, as many as 55,000 sea turtles drowned annually in shrimp nets.

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In case Section 201's broad exemption is not sufficient, Section 208 expressly requires the Secretary to exempt shrimpers from TED requirements when the Secretary determines that their contributions to sea turtle conservation programs exceed the harm to sea turtles resulting from not using TEDs. Similarly, Section 104 exempts from the take prohibition anyone who participates in some unspecified way in captive breeding programs, predator control, artificial feeding, or habitat management. Thus, a shrimper who sends a donation to a program to preserve sea turtle nesting beaches along the Persian Gulf could be allowed to capture and drown sea turtles in the Gulf of Mexico. This special assistance to the Gulf of Mexico shrimp fleet is particularly outrageous in light of the recent report in the October 1995 issue of *National Fisherman* that more than 100 new shrimp trawlers are being built or on order at yards along the Gulf of Mexico, fueled by high shrimp prices, lower insurance and interest rates, and industry optimism.

In addition to removing substantive protections for endangered marine wildlife, H.R. 2275 makes a fundamental and costly change in the implementation of the ESA for marine species. Section 301 eliminates the authority of the Secretary of Commerce from the definition of "Secretary" under the ESA, eliminating the authority of the Secretary of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service over endangered marine species. However, the bill never directly transfers authority over such species to the Secretary of the Interior and the U.S. Fish and Wildlife Service, and makes no provision for replacing the Commerce Department's personnel and its quarter-century of expertise in this arena. Inexplicably, Section 801 continues to authorize increasing appropriations for ESA implementation by the Commerce Department.

B. H.R. 2275 undermines protection of foreign species.

Under the ESA, the U.S. has been a global leader conserving threatened and endangered species. Attesting to this is the fact that the Convention on International Trade in Endangered Species (CITES) is commonly known around the world as the Washington Convention, as a result of its development and signing under U.S. leadership in Washington, D.C. in 1973. H.R. 2275 proposes to abandon our Nation's international leadership in this regard.

Numerous provisions of the bill will require the U.S. to subordinate our own best judgment on endangered species conservation to that of other nations, even when the wildlife conservation laws and policies of those nations are less protective than our own. Section 207 prohibits the Secretary from adopting more restrictive conservation measures than those specified under CITES, despite the clear reservation in Article XIV of CITES of the right of parties to adopt more restrictive measures. Section 207 also requires the Secretary to obtain the written consent of all nations in which a threatened species is found before adopting any protective regulations. Thus, before protecting Argali sheep in the threatened portion of their range, the Secretary would have to get the written consent of Kyrgyzstan, Mongolia, and Tajikistan.

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Section 305 requires the Secretary to give actual notice to, and consult with, foreign nations which take on the high seas a species proposed for listing. Thus, under this provision, the U.S. would constantly find itself having to consult with Japan, Russia, and numerous other nations operating high seas fishing fleets around the world before a species could be listed.

Similarly, Section 204 creates a rebuttable presumption that the survival of foreign species is enhanced by taking for scientific collection, captive breeding, sport hunting, or falconry in accordance with the wildlife conservation laws of the nation in which the species is found. Before the Secretary could deny a permit for such purposes, the Secretary would have to give the nation of origin six months notice and opportunity to comment. Once again, the U.S. will be forced to delay or forego its world leadership in endangered species conservation.

3. H.R. 2275 Abandons Habitat Protection.

The National Research Council recently concluded in its report, *Science and the Endangered Species Act*, that habitat destruction is the most serious threat to endangered species and, therefore, habitat protection is essential to endangered species conservation. The U.S. Supreme Court reached a similar result when it ruled in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon* that the ESA protects endangered species from indirect harm in the form of habitat destruction as well as from direct take.

H.R. 2275 ignores the importance of habitat conservation and overturns the *Sweet Home* decision. Section 202 restricts the definition of harm to direct action that actually kills or injures a member of a listed species. Thus, Texas developers could destroy the entire remaining nesting habitat for an endangered migratory songbird such as the golden-cheeked warbler when the bird is in Central America, as it is most of the year.

The bill also reduces protection for designated critical habitat. Section 504 redefines critical habitat to encompass only occupied habitat that is necessary to the persistence of a species for the next 50 years. Thus, formerly occupied portions of the historic range of a species which may be essential to the long-term recovery of the species would be left unprotected.

Section 601 creates a biological reserve system which perversely will result in less habitat protection for listed species. Endangered species conservation efforts on units of the reserve system must be consistent with other resource activities that occur on the units. Endangered species conservation on federal lands not included in the reserve system can only occur if the Secretary finds that the species is not otherwise protected within the reserve system.

4. H.R. 2275 Eliminates Federal Agency Conservation Duties.

What has set the ESA apart from other wildlife conservation laws is its requirements in Section 7 that federal agencies use their authorities, in consultation with the Secretary, to further

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the conservation of threatened and endangered species. In 1978, the U.S. Supreme Court ruled, in *Tennessee Valley Authority v. Hill*, that under the ESA, endangered species are to be accorded the highest of priorities and federal agencies must work to ensure that their other duties are carried out in harmony with their obligation to conserve endangered species. Section 401 of H.R. 2275 reverses this priority, requiring federal agencies to conserve listed species only to the extent that it fits in with their other duties.

In addition, Sections 401 and 502 make the interagency consultation requirement discretionary with the federal agency proposing an action. Thus, if the U.S. Forest Service is proposing logging in endangered grizzly bear habitat, it will be up to the Forest Service to decide whether it wishes to consult with the U.S. Fish and Wildlife Service on the impacts of the logging on the species. Furthermore, even if the federal agency chooses to consult, that consultation must be concluded within 90 days, subject to limited extensions, or the action may go forward regardless of the impact on the species.

Section 402 creates broad exemptions from interagency consultation requirements, including an exemption for routine operation and maintenance of a project or facility. Thus, conservation measures identified through interagency consultation, such as underpasses to prevent endangered Florida panthers from being struck by highway traffic, might never come to light.

The bill also amends at least nine other wildlife conservation laws in addition to the ESA. Section 102 exempts the preparation and implementation of cooperative management agreements from the National Environmental Policy Act (NEPA). Section 205 provides that a permit issued under the ESA will suffice as a permit under the Bald and Golden Eagle Protection Act, the Marine Mammal Protection Act, the Lacey Act, the Fish and Wildlife Conservation Act, the Migratory Bird Treaty Act, the Migratory Bird Conservation Act, and the Wild Bird Conservation Act. Section 401 effectively repeals the National Forest Management Act's requirement that national forests be managed to maintain viable populations of native and desired non-native wildlife.

In light of all of the exemptions created by H.R. 2275 for federal and non-federal activities alike, it is almost superfluous that Section 403 eliminates the Endangered Species Committee and its carefully crafted procedures for granting exemptions from the ESA in the rare case of a truly irreconcilable conflict between a project and species conservation. In its place, the Secretary of Defense is given unreviewable authority to exempt activities on national security grounds and the President is given the authority to exempt activities in federal disaster areas.

#### 5. H.R. 2275 Is Scientifically Flawed.

As Dr. Stuart Pimm of the University of Tennessee will tell you in greater detail in his testimony, the bill is not based on sound science. For example, even though the National Research Council concluded in its recent report on the ESA that captive breeding is not a

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substitute for conservation of endangered species in the wild, including habitat protection, Section 505 requires the Secretary to emphasize captive breeding as a conservation measure. Similarly, while the National Research Council recognized the biological importance of protecting distinct populations, Section 902 requires the delisting of any distinct population segment that is not designated as a distinct population in the national interest by Congress and subjects all future listings of distinct populations to this political popularity contest.

While Section 304 creates a host of minimum standards for the scientific information contained in a petition to list a species, Section 307 authorizes delisting petitions with virtually no minimum requirements other than that the Secretary respond to them within a prescribed period. In addition, Section 205 requires the Secretary to give priority to research on alternative methods and technologies to reduce incidental take of listed species if existing methods and technologies are alleged to entail significant costs to non-federal persons, even if the existing methods and technologies are effective in reducing incidental take. Thus, the Secretary would be required to give priority to research on alternatives to TEDs, even though the National Academy of Sciences has concluded that requiring TEDs in shrimp nets is the most effective way, short of banning shrimping, to protect sea turtles and, if construction of new shrimp trawlers is any indication, the Gulf of Mexico shrimp fishery is booming.

6. H.R. 2275 Undermines Law Enforcement.

In addition to the numerous ESA exemptions created by H.R. 2275, the bill undermines the ability of the federal government and of citizens to enforce the law. Contrary to long-established rules under U.S. wildlife laws such as the Lacey Act, Section 201 restricts the seizure of wildlife in an ESA enforcement action to specimens of a listed species. So, for example, a shrimper fishing without a TED would only forfeit any sea turtle specimen illegally taken, not the entire shrimp catch. Clearly, H.R. 2275 would dramatically weaken the deterrence value of ESA enforcement provisions.

Section 201 also limits the ability of citizens to enforce the ESA. Citizen suits against anyone other than the federal government would be barred, no matter how egregious the violation. Citizens would be barred from bringing suit, even in emergencies, to compel the Secretary to make a listing decision. The award of attorney fees and expert witness costs, designed to encourage citizen enforcement, would be eliminated. On the other hand, suits by those claiming economic injury or challenging a decision to list a species would be expressly authorized.

7. H.R. 2275 Will Be Enormously Costly.

At a time when many in Congress are focusing on reducing bureaucracy and the burden on American taxpayers, H.R. 2275 goes in the opposite direction. Sections 302 and 303 mandate numerous public hearings, peer review, and other procedural requirements regardless of whether

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there is any controversy surrounding a listing decision or other ESA action. Section 903 alone will require the Secretary to develop conservation objectives and plans and revise existing recovery plans for approximately 1,500 currently listed species within 42 months of enactment.

H.R. 2275 will also cost taxpayers millions of dollars. Sections 802 and 803 require taxpayers to pay up to half the cost of activities which, but for the ESA, would harm threatened and endangered species. Section 101 requires compensation to be paid to any owner of real or personal property who claims a diminution in value of any portion of the property of as little as 20 percent. This is a far broader standard than the standard for compensation under the takings clause of the Fifth Amendment to the Constitution and one that is particularly unjustified in light of the fact that there has never been a finding by any federal court that the ESA has resulted in an unconstitutional taking of private property. Moreover, by requiring compensation to be paid from the inadequate annual appropriations of the U.S. Fish and Wildlife Service, Section 101 is designed to cripple the Service's ability to effectively conserve species.

In sum, Mister Chairman, H.R. 2275 will undermine the ESA's most important protections for threatened and endangered species and impose additional bureaucracy and cost to taxpayers in the process. If H.R. 2275 is enacted, the progress our Nation has made over the past two decades in stemming the tide of species extinction will be lost. Quite bluntly, H.R. 2275 is a recipe for extinction.

#### RECOMMENDATIONS FOR RESPONSIBLE REFORM

Rather than adopting the misguided "reforms" embodied in H.R. 2275, this Committee and the House should adopt an ESA reauthorization bill which responsibly addresses the concerns that have been raised about the ESA and its implementation, while ensuring that the ESA remains what it has been for more than twenty years, an effective law for the conservation of threatened and endangered species. Responsible reform of the ESA should be based on the following principles:

First, we should not spend our children's inheritance. Conserving species benefits future generations as well as ourselves. These benefits may not always be quantifiable in monetary terms. Long-term benefits to future generations must not be sacrificed for short-term economic gains.

Second, an ounce of prevention is worth a pound of cure. Conserving species before they are on the brink of extinction offers more and better opportunities to balance species conservation against economic and other considerations, helping avoid conflicts.

Third, we must put our money where our mouths are. Sustained and adequate funding of historically underfunded endangered species conservation programs is essential. Similarly, greater incentives should be provided to private landowners to encourage endangered species

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conservation on their properties.

Fourth, we must keep our eyes on the ball. The purpose of the ESA is to conserve threatened and endangered species and the ecosystems upon which they depend. While it is important to make the ESA flexible, effective conservation of species and their habitats must remain the fundamental goal of the law.

With these principles in mind, I offer the following suggestions for responsible reforms to the ESA:

\* The ESA, in combination with other laws, should do a better job of preventing species from becoming endangered in the first place. The ESA can be improved by providing express authority in the law for a preventive program to identify imperiled ecological communities and ecosystems, key species within those communities, and cooperative measures which can be taken by federal, state, local and private parties to conserve those species, communities, and ecosystems. In particular, steps must be taken to conserve species before they decline to the point where listing under the ESA is necessary.

In addition, the ESA was never intended to solve all our wildlife conservation problems. Instead, the ESA was intended as a safety net, protecting species from extinction when other measures have failed. Thus, in addition to making the ESA itself more proactive, it is essential that all our wildlife conservation laws and policies, particularly those governing management of public resources such as federal lands and marine resources, be more proactive in conserving wildlife and plants.

\* The ESA should be improved to provide more effective recovery measures for threatened and endangered species. The best way to eliminate conflicts between development and species conservation is to recover species so that they can be removed from the endangered species list. Once a species is listed, the Secretary should assemble a recovery team, consisting of representatives of federal agencies, State, local, and tribal governments, private landowners, scientists, conservationists, industry representatives, and other interested persons to prepare a recovery plan within 18 months of listing. Plans should be developed with sufficient opportunities for public review and comment, including review and comment by the regulated community and other interested citizens.

Recovery plans should emphasize the role of federal agencies and public lands in achieving recovery. Recovery targets, based on the best available science, should be established at the outset, before considering the various alternatives for achieving the targets. These targets should provide objective benchmarks for assessing progress toward recovery and delisting. Plans should include enforceable deadlines for recovery activities. Recovery plans should give priority to actions that will provide the greatest recovery benefits and identify ways to reduce costs of recovery without sacrificing species conservation. Recovery plans should provide guidance to



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private landowners regarding what activities may result in an illegal taking of a listed species. Habitat conservation plans developed pursuant to Section 10 of the ESA should be required to be consistent with recovery plans. When possible, recovery plans should be developed for multiple species dependent on a common ecosystem. Adequate funding for recovery planning and implementation is essential.

\* **The ESA should provide greater incentives for private landowners to conserve species on their property.** A revolving loan fund to assist State and local governments in the development and implementation of habitat conservation plans should be established. Tax incentives, including deferral of estate taxes on property subject to a cooperative agreement for the conservation of listed or candidate species, should be created. Existing land stewardship programs, such as the Conservation Reserve Program and the Forest Stewardship Program, should be amended to provide additional benefits for activities that conserve listed and candidate species while also serving the original goals of the programs. New incentive programs, authorizing the Secretary of the Interior to pay private landowners for undertaking additional endangered species conservation activities beyond those required by existing law, should be authorized. Regulatory incentives which provide landowners with assurances that their conservation obligations will not increase as a result of their voluntary conservation activities while ensuring that species truly benefit, should be considered.

\* **Immediate steps should be taken to reduce the frustration citizens sometimes feel in dealing with federal agencies charged with ESA implementation.** Each field office of the U.S. Fish and Wildlife Service should have a designated Property Owner and Community Assistance officer whose job is to provide timely advice and assistance to landowners in complying with the ESA and to answer questions and respond to complaints and suggestions from landowners. These officers will also be responsible for providing landowners with information about the alternative dispute resolution mechanisms already available in the U.S. Claims Court to those claiming that the federal government has taken their property without compensation.

In conclusion, Mister Chairman, the ESA is our Nation's promise to leave our children and grandchildren a world as rich in plants and wild animals as the one we enjoy. H.R. 2275 would break that promise, seriously undermining the ESA's effectiveness. Fortunately, there is another path open to this Committee and the House. A bill based on the responsible reforms I have just outlined will address the concerns that have arisen regarding the ESA while ensuring that we keep our promise to future generations. I urge this Committee to follow that path.

Thank you. I will be happy to answer your questions.

**Testimony**

**of**

**Bob Stallman**

**President, Texas Farm Bureau**

**on behalf of the**

**National Endangered Species Act  
Reform Coalition**

**before the**

**Committee on Resources**

**U.S. House of Representatives**

**Endangered Species Act Reauthorization**

**September 20, 1995**

Mr. Chairman and distinguished members of the Committee. I appreciate the opportunity to appear before you today to testify regarding H.R. 2275, the Endangered Species Conservation and Management Act of 1995.

As Mr. English testified before this Committee several months ago, the National Endangered Species Act Reform Coalition is made up of a broad cross-section of Americans most affected by the Endangered Species Act. Our members range from small individual land owners and farmers, small companies, rural electric cooperatives and public power entities to agricultural interests, water districts, mining interests and other companies. As we have stated before, we are not big business. We have some large businesses among our members, but we primarily represent small, rural interests.

The National Endangered Species Act Reform Coalition was founded by rural people seeking to make some sense out of implementation of the Endangered Species Act. Over the past four years, the Coalition has grown to include more than 200 companies and associations representing millions of Americans across the country. As more and more people have been affected by the Endangered Species Act, they have come together to seek some balance in this law to make it work better for species, citizens and whole communities.

As a national coalition, we recognize the responsibility that our society as a whole has to protect our fish and wildlife. We also recognize that economic well-being in rural areas, suburban areas and urban America are all interrelated. So are providing jobs and providing for the wildlife of our nation. We strongly believe that our nation can have a healthy and strong economy and protect the most vulnerable of our fish and wildlife. But to do so, we must recognize all of our responsibilities to our communities, our children, and generations to come who will depend on a healthy and strong nation.

We commend this Committee for the work of the ESA Task Force chaired by Mr. Pombo. We commend you for listening to the voices of America as many expressed concerns about the implementation of the Endangered Species Act and some expressed support for the current law. We urge the members of this Committee to favorably report H.R. 2275, the Endangered Species Management and Conservation Act of 1995. This legislation offers the only clear hope for reform of the Endangered Species Act in the United States House of Representatives.

We recognize that H.R. 2275 is long and complex. I think all of us in this room would like more simple answers to the problems of endangered species management. But the simple fact is these issues have become complex and difficult. We urge you as a Committee and as members of the U.S. House of Representatives to recognize that complex and difficult endangered species management issues which have been years in the making cannot be papered over with vague changes in the law.

Members of our Coalition have participated in national dialogues on ESA reauthorization, governors dialogues including those sponsored by the Western Governors' Association and numerous formal and informal ESA reauthorization discussions with a wide range of groups having various points of view regarding the ESA. Through participation in these dialogues, our Coalition has come to the conclusion that there is strong agreement on many basic concepts for modifying the Endangered Species Act.

Such areas of potential agreement include increased peer review, strengthened state and local participation in ESA management and strengthened public involvement in recovery planning conservation and other decision making. These areas of agreement are significant and can and should form the bases of a reauthorization and strengthening of the Endangered Species Act.

At the same time, we urge Congress in the strongest possible terms to address the more difficult issues as well. It is the more difficult decisions that we as communities and businesses throughout this country must face every day. Should the ESA remain supreme over other laws? Should the consultation process remain closed? What is the best method of conserving a species? All of these are difficult choices that this Congress must make. If this Congress moves forward on legislation which does not address these very real every day problems, our communities and our economy will continue to be in peril and the Endangered Species Act itself will remain in jeopardy for years to come.

We first began to seek reform of the Endangered Species Act before it expired in October of 1992. That expiration date has come and gone and the authorization of this statute has formerly expired. Now is the time to act to reauthorize and reform the Endangered Species Act.

The Coalition strongly supports H.R. 2275 and opposes weakening amendments or alternatives which would leave the ESA a law based on absolute requirements, few incentives and a harsh closed door regulatory attitude.

We believe H.R. 2275 represents responsible reform. To make the Endangered Species Act work, any reform must accomplish at least the following specific changes in the law:

- **Place the ESA on equal footing with other laws and responsibilities.**

Conserving species is an important goal for our country and our federal government must play a role in that process; however, that role cannot be undertaken at the expense of all other government functions. We must also build homes and schools, provide water and power to our communities and provide jobs for our people. The federal government's

obligations under the ESA should be considered and acted upon, but only on equal footing with other laws and obligations which are just as important to our nation's health and security.

- **Provide compensation for lost use of property.**

We recognize that compensation can be a difficult subject for local governments as well as for the federal government. As a Coalition, we strongly believe that proper endangered species management should seldom, if ever, require that an individual land owner lose his or her property in a manner that requires compensation to be paid. If land and water are required for species conservation purposes, they should only be acquired on a willing seller basis. However, if a regulatory approach to ESA management is maintained in the upcoming reauthorization, a sense of fundamental fairness requires that property owners be compensated for lost use of property which has become dedicated to a public good—the conservation of endangered or threatened species.

- **Significantly increased incentives for species conservation.**

There are several significant incentives for species conservation contained in H.R. 2275. Some of these incentives include cost sharing for species conservation, the creation of a habitat reserve grant program and the establishment of clear standards for regulatory certainty which are found in several sections of the legislation. In addition, we commend the leaders of this Committee for introducing separate legislation dealing with the important issues of tax incentives and a greater agricultural critical habitat reserve program. We feel these separate bills are an important part of a package of ESA species conservation bills based on incentive principles. These other bills are significant and necessary if we are to establish a truly incentive based system for species conservation.

All too often, incentives for species conservation are overlooked as an effective tool for endangered species management. To a large degree, many of the grassroots voices are correct in calling for an incentive based approach to species conservation. We urge this Committee to consider over the long term a more significant incentive based approach, with greater attention to incentive based species conservation efforts.

- Provide a more open and balanced recovery planning process.

The public ultimately holds the keys to a better working ESA. In areas where there has been a heavy regulatory approach to ESA decision making -- with decisions on recovery plans based on little or no input from the public -- support for the ESA fades rapidly upon imposition of the conservation measures. Title V of H.R. 2275 establishes a conservation planning process which allows much greater public input and provides for public hearings in affected communities.

H.R. 2275 also provides a significant change in the Endangered Species Act. It allows the government to determine the most appropriate level of species conservation. We recognize that in some cases this may fall short of full recovery for the species; however, we must make the best choice for the species and for the people and communities affected by the conservation choices. We have urged the Congress to clearly authorize conservation standards other than full recovery. H.R. 2275 does so.

- Authorization for cooperative conservation agreements.

Local species conservation requires the cooperation of private land owners and all types of communities. We believe that the ESA must be changed to contain a broad, flexible authorization for the use of cooperative management agreements to bring non-federal interests into the species conservation equation. However, we must stress that without regulatory certainty, such agreements are of little use. We support the provisions of H.R. 2275 which provide for cooperative management agreements with regulatory certainty. Such agreements will allow for flexible approaches to species conservation and in our view are far better than a pure regulatory approach.

- The ESA listing process should remain based on science, but should be open to scientific peer review on key biological decisions.

Title III of H.R. 2275 ensures that listing decisions will be based on the best available science by providing proper peer review of scientific decisions and by opening scientific data collection and analysis to a more public process. This is critical to ensure that species listed for protection under the Endangered Species Act truly are threatened or endangered.

- Significantly increase involvement of state and local government.

State and local governments have a great deal of expertise in land management and fish and wildlife conservation as well as conservation of wildlife habitat. We believe it is imperative that Congress recognize this expertise and significantly increase the ability of state and local governments to manage species conservation efforts. The role of state and local governments should not be limited to minor consultation roles.

We support the delegation of endangered species management to the states as is called for in H.R. 2275 as well as the significantly increased role of state and local governments found throughout the bill. Anything less than the working relationship established in the proposed legislation is to say that federal answers are always superior to state and local answers.

- Establish clear standards for making the most difficult ESA decisions.

There are several areas where ESA management decisions are most difficult. It is imperative that Congress establish clear standards in these areas, such as:

- Conservation of population segments of species should require special consideration or separate Acts of Congress.

The advocates of the current Endangered Species Act point with pride to the progress of our nation's symbol, the American Bald Eagle. It is crucial to note that Congress enacted several specific provisions to protect the bald eagle including FIFRA amendments banning the use of DDT and the Bald Eagle Protection Act. In the Bald Eagle Protection Act, Congress established a significant precedent that a species can be of such national significance that a specific federal protection statute can and should be enacted. Many of the great symbols of our country are of national significance. Just as it did with the Bald Eagle, Congress should enact specific statutes to conserve these species of national significance.

- Establish clear standards for when habitat modification will be viewed as a violation of the law.

There are few if any more important rights to a property owner than the ability to own, build upon or modify land. It is fundamentally wrong and unfair to inform land owners that modification of their property may cause criminal liability to the U.S. government without establishing in law a clear standard for what activities will be found to violate the law.

To us, it doesn't matter which U.S. federal court is correct in its view of liability in the *Sweet Home* case. What matters to our people is that there are clear standards for determining if an activity might result in civil and criminal penalties. We support establishment of a rule which clarifies that such extreme liability only will occur if a federally protected species is physically harmed by an activity.

Critics of endangered species reform often point to what they call extremist positions. It is hard to find a more extreme position than asserting that a law abiding citizen can be subject to criminal prosecution for disrupting essential behavior patterns of a species when such behavioral patterns are unknown to nearly all citizenry.

- Establish clear requirements for the designation of critical habitat.

In many respects, the existing law has reasonable language with respect to the designation of critical habitat, such as the habitat must be essential to the conservation of species. However, the current law also allows unoccupied habitat to be designated as critical habitat. There are good arguments for expanding the habitat of a species in trouble, but it is extremely unsettling for ordinary citizens to find their homes or property to be within zones designated as critical habitat for a species. We believe that critical habitat designations for lands where species are not currently located should be rarely used unless an overriding need for such designation is proven. Such an overriding need is not required under current law.



H.R. 2275 improves the requirements by establishing clear standards for critical habitat designation. If more habitat is needed, the proposed legislation authorizes the Secretary of the Interior to pay for more habitat through habitat reserve programs, cooperative management agreements and other means. This approach is better in our view than designating critical habitat for lands not occupied by these species.

## CONCLUSION

The National Endangered Species Act Reform Coalition has worked on ideas for ESA reform for close to four years. We believe that this Congress has an opportunity to reauthorize and improve the ESA and bring this law, which has direct impact on so many communities, closer to the people. If the politics of the past are allowed to continue to stalemate progress on this important matter, the law is doomed and with it are many of our smaller communities as well as the species which could be saved if the law received needed improvements.

# National Endangered Species Act Reform Coalition

**Membership**

Alma Electric Cooperative, Inc.  
Albama

Alaska Power & Telephone Company  
Port Townsend, Washington

American Electric Power Service Corporation  
Columbus, Ohio

American Farm Bureau Federation  
Washington, D.C.

American Petroleum Institute  
Washington, D.C.

American Public Power Association  
Washington, D.C.

Animas-La Plata Water Conservancy District  
La Plata, New Mexico

Anza Electric Cooperative, Inc.  
Anza, California

Apache County  
St. Johns, Arizona

Arizona Electric Power Cooperative, Inc.  
Bisbee, Arizona

Arizona Municipal Power Users' Association  
Phoenix, Arizona

Arizona Power Pooling Association  
Benson, Arizona

Art Homes, Inc.  
San Antonio, Texas

Bar Eight Cattle Co., Inc.  
Lyman, Nebraska

Barrick Goldstrike Mines, Inc.  
Zias, Nevada

Basic American Foods  
San Francisco, California

Battle Mountain Electric Cooperative  
& North Dakota

Beadle Electric Cooperative, Inc.  
Huron, South Dakota

Biggs Ranch  
Madras, California

Bob Ferguson - Independent  
El Toro, California

Boise Cascade Corporation  
Boise, Idaho

Boise-Kuna Irrigation  
Lura, Idaho

Bon Homme Yanikon Electric Association  
Lamb, South Dakota

Bridger Valley Electric Association  
Mountain View, Wyoming

Broadview Water District  
Fresno, California

C.T. Kallian Ranches  
Los Banos, California

California Association of Winegrape Growers  
Sacramento, California

California Farm Bureau Federation  
Sacramento, California

California Grain and Feed Association  
Sacramento, California

California Rice Industry Association  
Sacramento, California

Central Arizona Irrigation  
and Drainage District  
Flag, Arizona

Central Arizona Water Conservation District  
Arizona

Central Montana Electric Power Cooperative  
Billings, Montana

Central Nebraska Public Power  
and Irrigation District  
Holdrege, Nebraska

Chelan PUD No. 1  
Wenatchee, Washington

Chevron, U.S.A. Inc.  
Concord, California

City of Farmington  
Farmington, New Mexico

Clay-Union Electric Cooperative, Inc.  
Welford, South Dakota

Clyde Devis Real Estate  
Liberty Hill, Texas

Coalition of Counties for  
Stable Economic Growth  
Glenwood, New Mexico

Coalition of Oil & Gas Industry Associations  
Denver, Colorado

Coalition to Protect & Preserve  
Private Property Rights  
Bakersfield, California

Codrigton-Clark Electric Cooperative, Inc.  
Waterloo, South Dakota

Coeur d'Alene Mines Corporation  
Coeur d'Alene, Idaho

Colorado River Energy  
Distributors Association  
Salt Lake City, Utah

Colorado River Municipal Water District  
Big Spring, Texas

Colorado River Water Conservation District  
Glenwood Springs, Colorado

Colorado Rural Electric Association  
Denver, Colorado

Columbia Rural Electric Association  
Dayton, Washington

Columbia Snake River Irrigators Association  
Pruett, Washington

County of Gaston  
Aspen, New Mexico

County of Eddy  
Lordsburg, New Mexico

County of Elko  
Elko, Nevada

County of Sierra  
Truch of Consequas, New Mexico

Deseret Generation and Transmission  
Sandy, Utah

Direct Services Industries  
Portland, Oregon

Dixie Escalante Rural Electric Association  
Bery, Utah

Douglas County PUD No. 1  
East Wenatchee, Washington

Douglas Electric Cooperative, Inc.  
Armadillo, South Dakota

Duck River Agency  
Shelbville, Tennessee

D. M. Camp & Sons  
Bakersfield, California

Dugan Production Corporation  
Farmington, New Mexico

East River Electric Power Cooperative  
Houston, South Dakota

Edison Electric Institute  
Washington, D.C.

Empire Electric Association, Inc.  
Lorice, Colorado

Essex Irrigation District  
Lester, California

Farm Credit Bank of Texas  
Austin, Texas

FEN Electric Association, Inc.  
Farmch, South Dakota

Ferreira Farms  
Los Banos, California

Flathead Electric Cooperative  
Kalispell, Montana

FMC Corporation  
Washington, D.C.

Fordel, Inc.  
Merced, California

Gardner Power Association, Inc.  
Archie, Utah

Glenn-Colusa Irrigation District  
Wilkes, California

Golden Spread Electric Cooperative, Inc.  
Amarillo, Texas

Graham County Electric Cooperative, Inc.  
Tona, Arizona

Greater Westside California  
Women for Agriculture  
Duo Plata, California

HD Electric Cooperative, Inc.  
Clear Lake, South Dakota

Hells Water District  
La Mesa, California

Holy Cross Electric Association, Inc.  
Greenwood Springs, Colorado

Hot Springs Rural Electric Cooperative  
Thermopsis, Wyoming

Idaho County Light and Power  
Cargenite, Idaho

Idaho Mining Association  
Boise, Idaho

Idaho Power Company  
Boise, Idaho

Intercounty Electric Association, Inc.  
Merced, South Dakota

Intermountain Consumer Power Association  
Sandy, Utah

International Council of Shopping Centers  
Alexandria, Virginia

International Water District  
Lima, California

Interstate Natural Gas Association of America  
Washington, D.C.

Kaiser Aluminum and Chemical Corporation  
Oakland, California

Kaufman Board  
Modesto, California

Kern County Water Agency  
Bakersfield, California

Kingsbury Electric Cooperative, Inc.  
St. Joe, South Dakota

Lake Region Electric  
Wester, South Dakota

Lincoln-Union Electric Company  
Altoona, South Dakota

Lyon-Lincoln Electric Cooperative, Inc.  
Yler, Minnesota

Mancoos Water Conservancy District  
Merax, Colorado

Melody Herford Ranch  
Jackson Hole, Wyoming

Melvin Morris - Developer  
Hemlock, California

Merced Irrigation District  
Merced, California

Merrill Real Estate  
Madras, California

Mid Cal Auto Truck Plaza, Inc.  
Santa Ana, California

Mid-West Electric Consumer Association  
Denver, Colorado

Morgan County Rural Electric Association  
St. Hilpin, Colorado

Morton Buildings, Inc.  
Morton, Illinois

Mt. Wheeler Power, Inc.  
Ely, Nevada

## National Endangered Species Act Reform Coalition

National Association of Home Builders Washington, D.C.	Rancho California Water District Tamarac, California	Tri-State Generation and Transmission Association, Inc. Denver, Colorado
National Association of Industrial and Office Properties Herndon, Virginia	Raspo Farms Buck, California	Tulelake Irrigation District Tulelake, California
National Association of Real Estate Investment, Franchises, Inc. Washington, D.C.	Ree Electric Cooperative, Inc. Niles, South Dakota	Turlock Irrigation District Turlock, California
National Association of Realtors Washington, D.C.	Renville-Sibley Cooperative Power Association Dunbar, Minnesota	Union County Electric Cooperative, Inc. Elk River, South Dakota
National Association of State Departments of Agriculture Washington, D.C.	Ringling Brothers and Barnum & Bailey Ft. Worth, Texas	Union Pacific Fort Worth, Texas
National Rural Electric Cooperative Association Washington, D.C.	Riverside County Farm Bureau Moreno Valley, California	Upper Tampa Water Conservancy District Meadow Springs, Colorado
National Stone Association Washington, D.C.	Rushmore Electric Power Cooperative, Inc. Aspen City, South Dakota	Valley Center Municipal Water District Valley Center, Colorado
National Water Resources Association Arlington, Virginia	San Luis Valley Rural Electric Cooperative Monte Vista, Colorado	Village Electric Cooperative, Inc. Linton, Missouri
Natural Resources United, Inc. Mobile, Alabama	San Isabel Rural Electric Cooperative Fowler, Colorado	Wabash Valley Power Association, Inc. Indianapolis, Indiana
Nebraska Electric G & T Cooperative, Inc. Columbus, Nebraska	San Joaquin County Citizens Land Alliance Tracy, California	Washington County Water Conservancy District St. George, Utah
Nebraska Farm Bureau Federation Lincoln, Nebraska	San Joaquin River Exchange Contractory Water Authority Los Banos, California	Washington Public Utility Districts Association Seattle, Washington
Newmont Mining Corporation Denver, Colorado	San Luis Water District Los Banos, California	Washington State Water Resources Association Tacoma, Washington
Niobrara Electric Association, Inc. Lusk, Wyoming	Santa Nella Development Association Modesto, California	Washington Water Power Spokane, Washington
North Fork Water Conservancy District Northfork, Colorado	Shafter-Wasco Irrigation District Wasco, California	Weber City Canal River Water Users Association Ogden, Utah
Northern Electric Cooperative, Inc. Buck, South Dakota	Sangre De Cristo Electric Association, Inc. Monte Vista, Colorado	Weber River Water Users Association Jordan, Utah
Northwest Electric Power Cooperative St. Missouri	S.M. Smith Farms, Inc. Turlock, California	Wells Rural Electric Company Wells, Nevada
Dahle Electric Cooperative, Inc. Buck, South Dakota	Sioux Valley Electric Colbran, South Dakota	Wellton-Mohawk Irrigation & Drainage District Wellton, Arizona
Oglethorpe Power Corporation Tucker, Georgia	South Central Nebraska Bankers Association Nebraska	Western Montana Electric Generation and Transmission Cooperative, Inc. Missoula, Montana
Olivenhain Municipal Water District Encinitas, California	Southern San Joaquin Municipal Utility District Delano, California	West Star-5, Inc. Firthright, California
Oregon PUD Association Salem, Oregon	Southwest Water Conservation District of Colorado Durango, Colorado	Westlands Water District Fresno, California
Oxli Construction Modesto, California	Southwestern Power Resources Association Lodi, California	Westside S-D Farms, Inc. San Juan, California
Pacific Northwest Generating Cooperative Portland, Oregon	Spink Electric Cooperative Medford, South Dakota	Wheat Belt Public Power District Selma, Missouri
Palo Verde Irrigation District Blythe, California	St. John Farms Orland, California	Whetstone Valley Electric Cooperative, Inc. Milbank, South Dakota
Panache Water District Fresno, California	Sulphur Springs Valley Electric Cooperative Waxahatchee, Texas	Wilder Construction Company Bellevue, Washington
Phelps Dodge Washington, D.C.	Texas Aggregates and Concrete Association Austin, Texas	Wilder Irrigation District Cabeza, Idaho
Pisley Irrigation District Pasco, California	Texas Farm Bureau Waco, Texas	Williamson County Georgetown, Texas
Placer County Water Agency Fortsill, California	The Montana Power Company Butte, Montana	Wyoming Water Development Association, Inc. Cheyenne, Wyoming
Plains Electric Generation and Transmission Cooperative, Inc. Albuquerque, New Mexico	Toll Brothers, Inc. Huntingdon Valley, Pennsylvania	Wyrulek Company Lodgepole, Wyoming
Puget Sound Power and Light Seattle, Washington	Traverse Electric Cooperative, Inc. Watson, Minnesota	Y-W Electric Association, Inc. Abbeville, Louisiana
Rainbow Municipal Water District Fairfield, California	Trico Electric Cooperative, Inc. Tucson, Arizona	Yuba County Water Agency Marysville, California
	Tri-County Electric Association, Inc. Pahrump, South Dakota	

In addition, the National Endangered Species Act Reform Coalition has received contributions from numerous individuals who support the goals and objectives of the Coalition.

September 19, 1995

Statement of:

**Robert Gordon**  
**Executive Director**  
**National Wilderness Institute**  
**on behalf of**  
**Grassroots ESA Coalition**

**Committee on Resources**  
**Wednesday**  
**September 20, 1995**

Mr. Chairman, Chairman of the Endangered Species Task Force and Committee members, I appreciate the opportunity to appear before you today on behalf of the Grassroots Endangered Species Coalition. The Grassroots ESA Coalition is a true grassroots organization comprised of about 300 organizations representing over 4 million members. We commend the Chairmen and Task Force Chairman for addressing some of issues in their proposal which we consider most important and which we anticipate will be most heatedly opposed by those who would defend the status quo and are inherently opposed to changing the way Washington does business.

The Coalition is dedicated to promoting a series of principles which we believe represent the future of conservation. These principles are the foundation of non-regulatory and incentive-based endangered species conservation program which will result in the actual recovery and conservation of endangered species, something the current program has failed to do. Such an approach will save species because it removes the adverse social, economic and conservation consequences stemming from a regulatory approach. In short, our goal is to create an endangered species program which works as opposed to the current program which has been a failure as is well documented in attached material.

There are many individuals, organizations, interests and opinions on how to best approach the issue of endangered species but I think they can be generally divided into three groups.

First, there are those who wish to basically retain the program as is without significant changes. A few years ago they argued it was doing a good job, not really causing any significant conflict and, if any changes were needed they were only needed to expand the program's regulatory authority and punitive approach. As it has become clear that the claims that the current Act has been a success cannot be substantiated and that the Act is clearly creating incentives perverse to the conservation of endangered species and habitat, these reform opponents have begun to present the argument that the programs is basically sound but only a few minor modifications are needed. These arguments are clearly an attempt to reduce the momentum of those promoting real reform; they are basically arguing for perestroika in lieu of meaningful changes.

Secondly, there are those who recognize that this program has been a failure for people and wildlife and who wish to alleviate the tremendous and adverse economic and social costs and to lessen the adverse conservation consequences of a regulatory program by amending the current law with such elements as tax incentives and measures to protect property. These leaders, individuals, organizations and interests are dedicated to bringing about reforms within the structure of the existing Act.

Third and finally there is group which shares many overlapping concerns with the second group but believes in a fundamentally different approach. In this group fall the members of the Grassroots ESA Coalition. As, I alluded to this group sees our current endangered species program as inherently unproductive or even counterproductive because it is a regulatory

approach rather than an incentive-based approach. We recognize that those regulations which cause the social and economic conflict are also the root cause of this policy's failure to conserve endangered species. A regulatory approach creates disincentives for the provision of habitat, making endangered species or suitable habitat a liability. It creates an adversarial relationship between landowners and government officials charged with carrying out conservation programs and locks out many possible solutions and creative and proven management strategies that could be brought to bear in an effort to conserve endangered species. Our overall view is explained in more detail in the attached mission and principles statements.

Today, However, we have been invited to specifically address the measure pending before the Committee. As it is a large proposal with three companion bills, my remarks will focus on the two elements which members of the coalition consider the most important.

First is compensation for regulatory takings. The members of the coalition firmly believe that no reform will be of any significant value, and in fact, will be counter productive, unless property rights are protected. This critical step is essential not only on economic and social grounds as well as matter of individual freedom but also to reduce the extreme adverse conservation consequences that regulatory takings cause.

Second, is the reversal of the arbitrary and counterproductive extension of the existing law and regulations through the expansive interpretation "harm" provision by the US Fish and Wildlife Service and courts. The adverse conservation, economic and individual liberty effects of this action are well demonstrated by the experience of Mr. Cone who has also addressed you today

The adverse conservation consequences of the expansive interpretation of harm are becoming increasingly clear. Michael Bean of the Environmental Defense Fund recently described the problem in a talk to U. S. Fish and Wildlife Service employees when he said there is "increasing evidence that at least some private land owners are actively managing their land so as to avoid potential endangered species problems." He went on to say:

The problems they are trying to avoid are the problems stemming from the Act's prohibition against people 'taking' endangered species by adverse modification of habitat. And they're trying to avoid those problems by avoiding having endangered species on their property. Because the woodpecker primarily uses older trees for both nesting and foraging, some landowners are deliberately harvesting their trees before they reach sufficient age to attract woodpeckers, in their view, and in fact before they reach the optimum age from an economic point of view.

Now it's important to recognize that all of these actions that landowners are either taking or threatening to take are not the result of malice toward the red-cockaded woodpecker, not the result of malice toward the environment. Rather, they're fairly rational decisions motivated by a desire to avoid potentially

significant economic constraints. In short, they're really nothing more than a predictable response to the familiar perverse incentives that sometimes accompany regulatory programs...

Sam Hamilton, former USFWS State Director in Texas, said, "The incentives are wrong here. If I have a rare metal on my property, its value goes up. But if a rare bird occupies the land, its value disappears."

Other wildlife officials have pointed out how listing a species under the present law can further imperil its prospects. Larry McKinney, Director of the Resource Protection Division of the Texas Parks and Wildlife Department stated:

I am convinced that more habitat for the black-capped vireo, and especially the golden-cheeked warbler, has been lost in those areas of Texas since the listing of these birds than would have been lost without the Endangered Species Act at all.

There is increasing acknowledgment of the adverse conservation consequences that punitive regulations cause, and there is almost general recognition about the need to incorporate incentives into endangered species conservation.

*"...[Encourage] large landowners to enter into voluntary agreements to manage their land to protect species, as a substitute for regulation..."*

*"The reauthorization must reduce administration, economic, and regulatory burden on small landowners while providing greater incentives to conserve species."*

— George T. Frampton, Jr., Assistant Secretary, May 18, 1995

*"The... ESA must be an ENABLING Act, opening doors of opportunity and marshaling latent goodwill that was stifled by the proceeding act."*

*"We must put money into carrots not sticks. People respond to incentives. For instance, ill-conceived tax structures drive rational people to do socially undesirable acts."*

— Dr. David G. Cameron, Retired Professor of Biology and Genetics, Montana State University, May 25, 1995

*"Create incentives for landowners to conserve species."*

— Dr. Gene Wood, The Society of American Foresters, May 25, 1995

*"We seek to provide workable procedures and positive incentives in the Endangered Species Act which promote conservation of wildlife in a way that considers economic factors and respects the rights of private property owners..."*

*"Private landowners should be provided incentives to work cooperatively with the government to protect listed species."*

— W. Henson Moore, President and CEO, American Forest and Paper Association, May 18, 1995

*"We are told that there is a "public interest" in protecting these species, and that their survival will benefit all of us. Yet private landowners are told to bear the entire costs."*

*"The Act should provide positive incentives to enhance recovery of listed species rather than using solely negative enforcement policies."*

— Dean Kleckner, President, The American Farm Bureau Federation, May 18, 1995

*"... in many cases landowners will need no other incentive that the assurance that they will not be penalized for having such species on their land. In other cases, positive incentives will be needed."*

— Ike C. Sugg, Fellow in Wildlife and Land-Use Policy, Competitive Enterprise Institute, May 18, 1995

*"Provide incentives to private landowners"*

— John F. Kostyack, Counsel, National Wildlife Federation, May 18, 1995

*"Although incentives are useful to encourage habitat production under some circumstances, the best incentive for habitat production on our ranches is generally for government to intrude least into private efforts."*

— Dan Byrne, Robert A. Byrne Co., April 28, 1995

*"A system providing private property owners positive economic incentives to provide species habitat must be developed to avoid (a) the continued failure of the Act and (b) the Act's disregard and nonchalance toward private property rights."*

— Robin L. Rivett, Pacific Legal Foundation, April 28, 1995

*"Build partnerships with private landowners--Provide financial incentives and technical assistance for private landowners to plan for the conservation of listed and candidate species on their property. Remove disincentives that preclude sound conservation practices."*

— Daniel Taylor, Western Regional Representative, National Audubon Society, April 28, 1995

*"The Act should be modified so that Private Property Owners will freely encourage wildlife on their land without fear of government intrusion."*

— Leroy Ornellas, Dairy Farmer, Tracy, California, April 28, 1995

*"Landowners should be encouraged to create and maintain habitat for listed and candidate species through tax credits, hold harmless agreements, and other incentives. If society values the preservation of habitat for declining species on private lands, it should be willing to reward landowners for protecting these resources. Currently, landowners are penalized for damaging sensitive habitats, but the ESA offers no direct incentives for preserving or enhancing these habitats on private lands."*

— Edward C. Beedy, Ph.D., Wildlife Biologist, April 28, 1995



What many parties do not recognize or refuse to publicly acknowledge is that there is a direct and inverse relationship between the effectiveness of incentives and the degree of regulatory burden. Simply put, as regulations increase, the effectiveness of incentives decrease. To most effectively use incentives we need to reduce and remove of regulations. Landowners will not be responding to an incentive put forth in one hand if they know that in the hand behind the back is a club. As R.J. Smith has put it: " If the government will protect private property, private property owners will protect wildlife." The expansive interpretation of "harm" is the prime example of a specific regulation supposedly designed to benefit conservation of endangered species but having the opposite affect and which, in its present form would work profoundly to offset incentives.

Without the two elements - private property rights protection and a responsible clarification of the term "harm" the Coalition does not feel that any reform proposal would address any of the underlying faults in the current program. The Coalition unequivocally believes in full compensation for losses of private land use from regulation. The greater the protection of property rights, the greater the benefit to wildlife and the greater the degree to which landowners can be enlisted as allies in the conservation of endangered species.

We commend the Chairmen and Task Force Chairman for addressing these issues in their proposal. We also anticipate that these are the elements which we be most heatedly opposed by those who would defend the status quo and are inherently opposed to changing the way Washington does business. But, clearly these are the elements of this proposal which are most important and which reflect the sentiments of the average American.

The public is ready for such an approach. A poll by the Tarrence Group for Project Common Sense and a poll conducted for the Competitive Enterprise Institute both reveal overwhelming support for a program founded on incentives, that provides for protection of private property and which increases the role of the states. That material is attached to my statement

This type of thinking does not seem to be comprehensible to some in environmental establishment who are still wedded to policy proscriptions developed in the time of Brezhnev and a time when we had wage and price controls. We have learned a lot about the shortcomings of big government since then. The current Endangered Species Act is a prime example of a well intentioned but outdated law that isn't working well and needs to be replaced with a more effective program. Not a single endangered species has recovered as a result of enforcing the law's land use regulations in the entire history of the Act. The current punitive, regulatory law pits people against animals and as a result, they both loose. It's primary results are not conservation of wildlife but bureaucracy, litigation and strife. Those interests that thrive on that diet will resist any real reform, but the conservation and recovery of endangered species will continue to be held back until we replace outdated policies with the more dynamic and creative ones.

Frankly, what most members of the Grassroots ESA Coalition would prefer is to trade in the old law for a new model rather than attempt to make repairs. We do recognize that the two provisions I have addressed, property rights and clarifying the definition of harm, as well as

other specific provisions represent meaningful reform to existing law; indeed without these key provisions no amendment proposal to the current law could be considered a genuine and positive change or garner any enthusiasm from our members. We recognize the value of these provisions and will work to educate the public as regards the importance of protecting property so that property may be used to protect nature. The ESA Grassroots Coalition will continue to work diligently to spread the ideas which we are confident will serve as the basis of a new era in conservation.

We commend you for the many provisions of your bill that correct serious flaws in the current law and thank you for the conviction to undertake these reforms.

# GRASSROOTS ESA COALITION

POST OFFICE BOX 423  
BATTLE GROUND, WA 98604  
(360) 687-2305  
(360) 687-2973 FACSIMILE

#### EXECUTIVE COMMITTEE

KATHLEEN BENEDETTO  
BOB BOESE  
DAN BYFIELD  
CHUCK CUSHMAN  
TOM DEWEESE  
PAULA BASLEY  
MARGARET GABBARD  
ROBERT GORDON  
DENNIS HOLLINGSWORTH  
DAVE HOOK  
ICE SUOQ  
BRUCE VINCENT

#### PARTICIPATING GROUPS

ABUNDANT WILDLIFE SOCIETY  
ALASKA MINERS ASSOCIATION  
ALLIANCE FOR AMERICA  
ALLIANCE FOR RESOURCES & ENVIRONMENT  
AMERICAN AGRI-WOMEN  
AMERICAN LAND RIGHTS ASSOCIATION  
AMERICAN POLICY CENTER  
BLUE RIBBON COALITION  
CALIFORNIA FORESTRY ASSOCIATION  
CALIFORNIA WOMEN IN TIMBER  
COALITION TO PROTECT COASTAL PROPERTY (FL)  
COMMUNITIES FOR A GREAT NORTHWEST  
COMPETITIVE ENTERPRISE INSTITUTE  
CONSUMER ALERT  
DEPENDERS OF PROPERTY RIGHTS  
ENVIRONMENTAL POLICY TASK FORCE  
EXOTIC WILDLIFE ASSOCIATION  
FAIRNESS TO LAND OWNERS COMMITTEE  
FARM CREDIT BANK OF TEXAS  
FARM CREDIT PROPERTY RIGHTS FOUNDATION  
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NEW MEXICO CATTLE GROWERS ASSOCIATION  
OREGONIANS FOR FOOD & SHELTER  
PENNSYLVANIA LANDOWNERS' ASSOCIATION  
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UNITED 4 WD ASSOCIATION  
WASHINGTON CONTRACT LOGGERS ASSOC  
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WOMEN'S MINING ASSOCIATION  
WYOMING FARM BUREAU FEDERATION

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- ADIRONDACK SOLIDARITY ALLIANCE  
ALASKA LOGGERS ASSOCIATION  
ALASKA TIMBER TRUCKERS ALLIANCE  
ALBUQUERQUE PRODUCTION CREDIT ASSOC  
ALLIANCE FOR CONSTITUTIONAL DEFENCE INC  
AMERICAN LEGISLATIVE EXCHANGE  
AMERICAN LOGGERS SOLIDARITY  
AMERICAN RIGHTS COALITION  
AMERICAN TRAPPERS ASSOCIATION  
AMERICANS FOR TAX REFORM  
ANIMAL OWNER & KAREWIVER ASSOCIATION  
ANZA CHAMBER OF COMMERCE  
ARIZONA MINDNO DISTRICT/WEAVER MINDNO  
ARIZONA TRAIL RIDERS  
BEVERAGE MINDNO DISTRICT  
BIG HORN COUNTY MULTIPLE-USE  
BLACK HILLS WOMEN IN TIMBER  
BUILDING INDUSTRY ASSOCIATION/RIVERSIDE  
BURNET COUNTY PROPERTY OWNER RIGHTS  
CALIFORNIA ASSOCIATION 4 WD CLUBS  
CALIFORNIA ASSOCIATION BUSINESS PROPERTY  
CALIFORNIA DESERT COALITION  
CALIFORNIA OUTDOOR RECREATION LEAGUE  
CALIFORNIA WOMEN FOR AORICULTURE  
CATRON COUNTY CONCERNED CITIZENS  
CATTLEWOMEN OF TEXAS  
CHRISTIAN COALITION  
CITIZENS EQUAL RIGHTS ALLIANCE  
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CITIZENS FOR LOCAL CONTROL  
CITIZENS FOR PRIVATE PROPERTY RIGHTS  
CITIZENS FOR RESPONSIBLE ZONING  
CITIZENS FORUM TRUTH AND PROGRESS  
CITIZENS INFORMATION NETWORK  
CITIZENS LAND ALLIANCE  
CLEAR WATER RESOURCE COALITION  
COLORADO TRAPPERS ASSOCIATION  
COMMITTEE FOR A CONSTRUCTIVE TOMORROW  
CONCERNED CITIZENS FOR PROPERTY RIGHTS  
CONCH COALITION  
CREEKSIDE PROPERTY OWNERS  
DAVIS MOUNTAIN TRANS-PECOS HERITAGE  
DOOR COUNTY SNOWMOBILE TRAILS  
EAST MOJAVE PROPERTY OWNERS  
EASTERN OREGON MINDNO ASSOCIATION  
ENVIRONMENTAL CONSERVATION ORGANIZATION  
ENVIRONMENTAL ISSUES COUNCIL  
ENVIRONMENTAL STEWARDSHIP FOUNDATION  
FAMILY WATER ALLIANCE  
FARWELL IRRIGATION DISTRICT  
FEDERAL LAND BANK ASSOCIATION - KERRVILLE  
FEDERAL LAND BANK ASSOCIATION OF LUBBOCK  
FEDERAL LAND BANK ASSOCIATION OF MASON  
FEDERAL LAND BANK ASSOCIATION OF WACO  
FISHERMENS COALITION  
FLORIDA CITRUS MUTUAL
- GEORGIA PUBLIC POLICY FOUNDATION  
GALLATIN VALLEY SNOWMOBILE  
GOLD HILL RESOURCE COALITION - ID  
GRASSROOTS ALLIANCE  
GRASSROOTS FOR MULTIPLE USE  
HIGH DESERT MULTIPLE-USE COALITION  
HIGH PLAINS FEDERAL LAND BANK - PAMPA  
HILL COUNTRY HERITAGE ASSOCIATION  
IDAHO COUNTY FARM BUREAU  
IDAHO WOMEN IN TIMBER - CLEARWATER  
INDEPENDENT MINERS  
INSTITUTE REGULATORY SCIENCE  
KLAMATH ALLIANCE RESOURCES ENVIRONMENT  
KINGS COUNTY FARM BUREAU  
LANDOWNERS ASSOCIATION OF NORTH DAKOTA  
LEAGUE OF PRIVATE PROPERTY VOTERS  
LINCOLN COUNTY PUBLIC LANDS COMMITTEE  
MALHEUR TIMBER OPERATORS  
MCCULLOCH COUNTY PROPERTY OWNERS ASSOC  
MICHIGAN FOREST ASSOCIATION  
MINNESOTA CORN GROWERS RESEARCH & PROM  
MOBILE COUNTY LAND OWNERS ASSOCIATION  
MONTANANS FOR MULTIPLE USE  
MONTANA FOREST PRODUCTS  
MONTANA WOMEN IN TIMBER  
MULTIPLE USE ASSOCIATION  
NATIONAL ASSOCIATION OF MINDNO DISTRICTS  
NATIONAL HARDWOOD LUMBER ASSOCIATION  
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NIORRARA RIVER BASIN DEVELOPMENT ASSOC  
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NEW MEXICO WOOLGROWERS ASSOCIATION  
NORTHERN CATRON COUNTY RANCHERS  
NORTHWEST TIMBER WORKERS RESOURCE CNCL  
NEVADA OUTDOOR ALLIANCE  
OREGON INDEPENDENT MINERS  
OREGON SPORTSMENS DEFENSE FUND  
OREGONIANS IN ACTION  
PEOPLE FOR THE BEST (NATIONAL)  
PEOPLE FOR THE CONSTITUTION  
PEOPLE FOR THE WEST  
PEOPLE FOR THE WEST - ACCORD  
PEOPLE FOR THE WEST - ANKAS CHAPTER  
PEOPLE FOR THE WEST - BLACK RIVER  
PEOPLE FOR THE WEST - BRAWLEY  
PEOPLE FOR THE WEST - BRIDGEPORT  
PEOPLE FOR THE WEST - LUCERNE  
PEOPLE FOR THE WEST - RENO  
PEOPLE FOR THE WEST - RIM CHAPTER  
PEOPLE FOR THE WEST - ROUND VALLEY  
PEOPLE FOR THE WEST - SW NM CHAPTER  
PEOPLE FOR THE WEST - COPPERTRAIL  
PIEDMONT ENVIRONMENTAL DEVELOPMENT ALL
- PIMA COUNTY RURAL PROPERTY OWNERS  
PLOW (PRIVATE LANDOWNERS OF WISCONSIN)  
PROPERTY OWNER COALITION  
PROPERTY OWNERS ASSOC - RIVERSIDE COUNTY  
PROPERTY RIGHTS ALLIANCE  
PROPERTY RIGHTS FOUNDATION  
PUBLIC LANDS FOR THE PEOPLE  
QUAIL UNLIMITED - TEMECULA VALLEY CHAPTER  
REBELLION AGAINST GOVERNMENT EXCESS  
REGULATORY SCIENCE PRESS  
RESOURCE PROTECTION INSTITUTE  
RIVERSIDE & LANDOWNERS COALITION  
RIVERSIDE & LANDOWNERS PROTECTION  
SAN BERNARDINO COUNTY FARM BUREAU  
SAN DIEGO COUNTY FARM BUREAU  
SAN DIEGO OFF-ROAD COALITION  
SAN JOAQUIN COUNTY RCD  
SAVE OUR MOUNTAIN GOATS  
SCIENCE & ENVIRONMENTAL POLICY PROJECT  
SIERRA FOREST FOUNDATION  
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SISKIYOU COUNTY FARM BUREAU  
SOUTHERN AGRICULTURE CHEMICALS ASSOC  
SOUTHERN CROP PROTECTION ASSOCIATION  
SOUTHWEST FEDERAL LAND BANK OF DEVINE  
SOUTHWEST HARDWARE & IMPLEMENT ASSOC  
SOUTHWEST MEAT ASSOCIATION  
STAND UP!  
STEVENS COUNTY LAND RIGHTS  
SUGAR CANE GROWERS COOP OF FLOR  
TAKE BACK TEXAS  
TAKE BACK TEXAS ASSOCIATION  
TREASURE COAST COALITION  
TREES - COASTAL CHAPTER  
TULSAE GROWERS ASSOCIATION  
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WHATCOM COUNTY COALITION LAND USE EDUC  
WISCONSIN WOMEN FOR AGRICULTURE  
WINDING AMERICAN RIGHTS  
WISE USE SOLIDARITY  
WYOMING WOOLGROWERS  
YAVAPAI PROPERTY RIGHTS COALITION

# GRASSROOTS ESA COALITION

POST OFFICE BOX 423  
BATTLE GROUND, WA 98604  
(206) 687-2505  
(206) 687-2973 FACSIMILE

#### EXECUTIVE COMMITTEE

KATHLEEN BENEDETTO  
BOB BOESE  
DAN BYFIELD  
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AMERICAN POLICY CENTER  
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CALIFORNIA WOMEN IN TIMBER  
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COMMUNITIES FOR A GREAT NORTHWEST  
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## Statement of Principles Regarding Endangered Species

### The Endangered Species Act has:

- failed to conserve endangered and threatened animals and plants;
- discouraged, hindered, and prohibited effective conservation and habitat stewardship;
- created perverse incentives, thus promoting the destruction of privately owned endangered species habitat; and
- wasted scarce conservation resources.

### The Endangered Species Act has failed in large part because it has engendered a regulatory regime that has:

- violated the rights of individuals, particularly property rights;
- destroyed jobs, devalued property, and depressed human enterprise on private and public lands;
- hidden the full cost of conserving endangered species by foisting those costs on private individuals; and
- imposed significant burdens on State, county, and local governments.

### We therefore support replacing current law with an Endangered Species Act based upon these principles:

- Animals and plants should be responsibly conserved for the benefit and enjoyment of mankind.
- The primary responsibility for conservation of animals and plants shall be reserved to the States.
- Federal conservation efforts shall rely entirely on voluntary, incentive-based programs to enlist the cooperation of America's landowners and invigorate their conservation ethic.
- Federal conservation efforts shall encourage conservation through commerce, including the private propagation of animals and plants.
- Specific safeguards shall ensure that this Act cannot be used to prevent the wise use of the vast federal estate.
- Federal conservation decisions shall incur the lowest cost possible to citizens and taxpayers.
- Federal conservation efforts shall be based on sound science and give priority to more taxonomically unique and genetically complex and more economically and ecologically valuable animals and plants.
- Federal conservation prohibitions should be limited to forbidding actions intended to kill or physically injure a listed vertebrate species with exception of uses that create incentives and funding for an animal's conservation.

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(Continued on back)

## MISSION STATEMENT

A diverse and large coalition of organizations representing everyone from environmental groups and property owners to ranchers, miners, loggers and outdoor recreationists has publicly unveiled principles for establishing a new way to conserve our nation's endangered species.

The Grassroots ESA Coalition organizations united to promote these principles so that the old Endangered Species Act could be reformed in a way that benefits both wildlife and people, something the old law has failed to do.

The old law has been a failure for endangered species and for people. It has not led to the legitimate recovery of a single endangered species while costing billions of dollars and tremendous harm. The old way destroyed trust between people and our wildlife officials. We need to reestablish trust so we can conserve wildlife - no program will succeed without the support of our farmers, our ranchers, our citizens.

The old law failed because it is based on flawed ideas. It is founded on regulation and punishment. If you look at the actual law by section you see it is all about bureaucracy - consultation, permits, law enforcement. . . there isn't even a section of the law called "conservation," "saving" or "recovery."

It is a bureaucratic machine and its fruits are paperwork and court cases and fines - not conserved and recovered endangered species. What the Grassroots ESA Coalition and all Americans want to see is a law that works for wildlife, not one that works against people.

The future of conservation lies in establishing an entirely new foundation for the conservation of endangered species - one based on the truism that if you want more of something you reward people for it, not punish them. The debate that will unfold before the public is one between methods of conservation.

The old way is shackled to the idea that Washington bureaucrats can come up with a government solution through national land use control. Its supporters do not want to acknowledge that the law has failed because doing so would mean an end to the influence and power they have under the old system.

The Coalition sees a new way that can actually help endangered species because it stops punishing people for providing habitat and encourages them to do so. It creates an opportunity for our officials - for government - to reestablish trust and work with and earn the support of citizens. The Grassroots ESA Coalition is working to promote this new way.

If you think that government bureaucracy works, that welfare stops poverty and does not need reform or that the DMV and Post Office operate the way they should, then the old endangered species program is for you. If you do not, and you want to conserve endangered species without wasting money, intruding on people's lives and causing more pain and problems, then the Grassroots ESA Coalition is for you.

## Endangered Species Facts

## Did You Know...

- That no endangered species can be legitimately claimed as having recovered because of the Act?

Although a few species are claimed as recoveries, in each case it is more accurate to attribute removal from the endangered species list to "data error"—meaning it should not have been listed in the first place or its improvement is attributable to a factor other than the Endangered Species Act. For example, some species were improving before being listed while some owe their recovery in large part to the non-ESA-related ban of DDT.

- That 68.4% of animals that are candidates for addition to the Endangered Species Act are insects, snails, spiders and other invertebrates?

(Based upon the USFWS Animal Notice of Review—candidate list—8/11/94.)

- That the ESA discourages private property owners from providing habitat for endangered species:

According to Michael Bean of the Environmental Defense Fund: *"there is...increasing evidence that at least some landowners are actively managing their land so as to avoid potential endangered species problems."*  
*"Now it's important to recognize that all of these actions that landowners are either taking or threatening to take are not the result of malice toward the red-cockaded woodpecker, not the result of malice toward the environment... Rather, they're fairly rational decisions motivated by a desire to avoid potentially significant economic constraints. In short, they're really nothing more than a predictable response to the familiar perverse incentives that sometimes accompany regulatory programs."*

According to Larry McKinney of Texas Parks and Wildlife Commission: *"While I have no hard evidence to prove it, I am convinced that more habitat for the black-capped vireo, and especially the golden-cheeked warbler, has been lost in those areas of Texas since the listing of these birds than would have been lost without the ESA at all."*

- That numerous species have been added to the Endangered Species List by accident including the: Mexican duck, Pine Barrens tree frog, McKittrick pennyroyal, Palau dove, Palau owl, Palau flycatcher, Rydberg milk-vetch, Tumamoc globeberry and Maguire daisy?

Based upon the USFWS Threatened and Endangered Species List (8/94), GAO Report on Endangered Species (1988) and Federal Register delisting notices.

- That plans to recover endangered species include statements like:

Iowa Pleistocene Snail: *"With a return to glacial conditions it will be resuscitated over a major part of the upper Midwest, provided its relictual areas are preserved and maintained..."*

(continued on page 2)

## GRASSROOTS

## ESA

## COALITION

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 Battle Ground, WA 98604  
 (206) 687-2505  
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Florida Scrub Jay: "Because of the extreme usefulness of the Act in this case, it is not desirable to remove the scrub jay from protection under the "Endangered Species Act..." "There is no anticipated date of recovery because it may never be feasible to delist this species."

Blunt-nosed Leopard Lizard: "A current target acreage figure of 80,000 acres has been established for the San Joaquin Valley floor, with additional emphasis on optional habitats containing high density blunt-nosed leopard lizard... populations in identified 'priority' habitat areas... conflicting land users will be reduced or eliminated in an effort to restore habitat to optimal condition."

- That the ten species covered by the most expensive endangered species recovery plans are:

1	Atlantic Green Turtle	\$88,236,000
2	Loggerhead Turtle	\$85,947,000
3	Blunt-Nosed Leopard Lizard	\$70,252,000
4	Kemp's Ridley Sea Turtle	\$63,600,000
5 - 8	Colorado Squawfish	\$57,770,000
	Humpback Chub	
	Bonytail Chub	
	Razorback Sucker	
9	Black-Capped Vireo	\$53,538,000
10	Swamp Pink	\$29,026,000

- That there is a kind of cockroach - the Tuna cave cockroach - on the candidate species list?

- That the government has no estimate of the economic cost of the Endangered Species Act?

- That while the government has no estimated cost, if you use USFWS estimates of the average cost to list (\$68,400), recover (\$2.76 million) and delist (\$39,220) a species and multiply that by a fraction of the number of species on the list plus a fraction of the candidate species estimated by the Interior Department to require future listing, the cost of recovery alone reaches \$7.3 to \$9.1 billion.

This projection employs the methodology of the Interior Department Inspector General using USFWS's "high range" estimate of \$2,760,000 for recovery of 70% of currently listed species. The projection assumes that USFWS has made sufficient progress to recovery 30% of currently listed species without additional funding and uses the Inspector General's estimate that a range of 43-60% of Category 2 candidate species will eventually be listed. Figures based upon USFWS's own estimates and the USFWS Budget Justifications for FY '93 are adjusted to 1994 dollars.



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BATTLE GROUND, WA 98604  
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## Endangered Species and Public Attitudes

• **71% Favor Incentives and Rewards.** When presented the option of the most effective means for implementing ESA laws (an endangered species program based upon incentives or a ESA program based on penalties and restrictions on public and private land) 71% of voters indicated they believed that the establishment of incentives and rewards would be most effective.

- Only 15% believe that punishments and penalties would be more effective.
- Only 4% believe that both should be utilized.
- The view that incentives and rewards are more effective rises with education (50% of those without a high school education, 77% among college graduates.)
- There is no difference in attitude based on partisanship (72% of Republicans and ticket-splitters and 70% of Democrats believe in incentives.)

• **71% of voters believe that the States should have at least equal authority in setting and enforcing ESA policy in their state.**

- 65% believe that state government should have at least equal authority on setting and enforcing policy on federally owned lands in their states.
- Among voter groups such as African Americans, Democrats, Clinton voters, self-identified liberals, and working women 64% hold this view.

• **48% of voters and 62% of voters in Mountain region agreed that the Act has adverse impact on people**

- Respondents were asked if they agreed with the statement that ESA laws are hurting many industries, denying people the chance to find good jobs, provide for their families and build for their children's future.
- 48% agreed and 9% were uncertain
- 62% of voters in the Mountain region, 53% West, 50 Midwest agreed and 51% in the Northeast disagreed
- 54% of self-identified conservatives agreed while 57% of self-identified liberals disagreed
- 58% of Republicans agreed while 50% of Democrats disagreed

• **Only 18% of respondents believe that the Endangered Species Act should be applied equally to public and private land.**

- 39% believe that ESA should be applied to both public and private land but that private land owners should be compensated for any negative economic impact (There are higher levels of support for this position among Texas voters, moderate/liberal democrats, Democrat men, 35-44 year old voters and self-identified liberals)
- 27% believe that it should be applied to only public land (the subgroup holding this view is primarily Republicans, South - central region, women at home, seniors, self-identified conservatives and Bush and Perot voters.)
- 9% believe that ESA laws should be 'done away with' (This rises to 19% in Mountain states region, as do men over the age of 45 and older Republicans)

Survey results of a poll of 1,000 "likely" registered voters across the country conducted on March 25-27 with an associated confidence interval of  $\pm 3.1\%$ . The Survey was conducted by phone by the Tarrance Group for Project Common Sense.



COMPETITIVE ENTERPRISE INSTITUTE

For Immediate Release:

Contact: Greg Smith (202) 331-1010

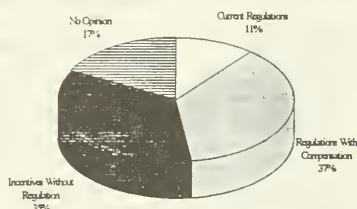
PUBLIC SUPPORTS *REAL* ESA REFORM

WASHINGTON, September 7—The American public supports much stronger Endangered Species Act (ESA) reforms than have been proposed in Congress, according to polling results released today by the Competitive Enterprise Institute. "The current Endangered Species Act is a disaster for both people and wildlife," said Ike Sugg, CEI's fellow in land and wildlife policy. "This poll shows Congress lags far behind the public's support for real reform."

According to the poll, conducted in August 1995, only 11 percent of Americans support the current ESA which regulates private land use without compensating landowners for their losses. 37 percent support compensation for "any loss" incurred by landowners as a result of the ESA's regulation of private property. 35 percent support the adoption of a non-regulatory, incentive-based approach to species conservation.

"That 72% of those polled believe private landowners should not be made to suffer *any* uncompensated losses under the ESA is significant," said CEI's Ike Sugg. "That 35% of them believe that even *compensated* takings are inferior to not regulating private property at all, is astounding."

## WHAT IS THE BEST WAY TO PROTECT ENDANGERED SPECIES?



The text of the question was as follows:

"Most Americans agree that saving endangered species of plants and animals is an important public goal, but they disagree on how best to go about achieving it. I will now read you three options which some people have suggested, and I would like to know which one *best* describes how you think we should protect endangered species in this country . . .

"(A) To continue preventing private landowners from using their own land where endangered species are found on their land, without compensating them for the losses incurred from such land-use regulation."

"(B) To allow the federal government to continue restricting the use of private land, but require that the federal government compensate the landowner for any loss."

"(C) To do away with the federal regulation in this area and instead have the government offer incentives to landowners to keep endangered species on their property."

11% chose (A), 37% chose (B), 35% chose (C), and 17% did not know or refused to answer the question. The question on Endangered Species was included in a national poll of 1,000 Americans selected at random, conducted August 21-24, 1995 by the polling company. The poll has a margin of error of +/-3 percent.

CEI is a non-profit, non-partisan public policy group dedicated to free markets and limited government. For a copy of the poll or for more information, call Greg Smith at (202) 331-1010.

**BENJAMIN CONE, JR.**

35-B Fountain Manor Drive  
Greensboro, North Carolina 27405  
H 910-272-5530 B 910-273-0166

**DESCRIPTION OF PROPERTY AND PLIGHT**

I, Benjamin Cone, Jr., live in Greensboro and own 8,000 of timberland in eastern North Carolina in Pender County. A small family lodge, caretaker's home, shed, dog pens, and barns are the only structures on the property called Cone's Folly. Approximately 2,000 acres are swampland along the scenic Black River and are not suitable for timber farming.

A wildlife biologist has documented the presence of 29 Red Cockaded Woodpeckers living in my old growth pine forest areas. Under current interpretation of the Environmental Protection Act by U. S. Fish and Wildlife personnel, I must maintain 1,121 acres of my timber farm as habitat for these 29 birds. I cannot cut my timber on the infested acreage. Penalties for cutting a tree where one of these birds lives or for killing a bird are severe-- a felony conviction results in \$25,000 in fines and/or up to five years in prison per incident.

**EARLY HISTORY OF THE LAND**

In Colonial times, the major industry of eastern North Carolina was provision of naval stores with transportation provided by the natural rivers. The pine forests were rich sources of pitch and turpentine. It appears that the Cone's Folly land was clear-cut in the early 1700's due to the large number of tarkels (tar kilns) on the property.

Large numbers of stump holes indicate that the property was clear-cut on additional occasions over the next 200 years. The last major clear-cut occurred in the early 1930's just prior to acquisition of the property by my late father, Benjamin Cone.

Of general interest, a scientist from the University of Arkansas, testing bald cypress trees as part of a study of weather patterns over the centuries, has discovered the oldest living trees east of the Rocky Mountains on the Black River perimeter of the property. The State of North Carolina has recently declared the Black River an Outstanding Resource Water.

**HISTORY OF CONE'S FOLLY PROPERTY**

My father bought the land in the 1930's, not as an investment, but as a place where he could always hunt and fish. Most of the timber had been cut prior to his purchase; he replanted the pine forests. The property gained the name Cone's Folly because his friends from Greensboro thought he was a fool to buy timberless land in the middle of nowhere. At his death in 1982, significant inheritance taxes were paid and the property passed to me .

### MANAGEMENT PRACTICES AT CONE'S FOLLY

Benjamin Cone, Sr. bought the land in order to hunt and fish. About every six or seven years, he would cut enough timber to show a profit and maintain the tax advantages of land ownership. The timber cutting was usually done through selective thinning. Plantings were done to benefit wildlife: chufa for turkey, bi-color for quail and songbirds, corn for deer and bear, rye for deer, sunflowers for dove. This practice of letting timber mature and frequent burning of the undergrowth was considered the best method for managing land for timber for wildlife and is recommended by most environmentalists. This practice was followed for 60 years and it also created a perfect habitat for Red Cockaded Woodpeckers.

### CONE'S FOLLY AND THE ENDANGERED SPECIES

In 1991, I told my consulting forester to plan for a sale of timber in my bird hunting area. He reported that he had discovered signs of Red Cockaded Woodpeckers which are protected by the Endangered Species Act and that I had a problem. I requested that the U. S. Fish and Wildlife Service come to Cone's Folly, review my situation and explain the guidelines for dealing with Red Cockaded Woodpeckers. At that time, the guidelines were slowly being shifted from "Henry's Guidelines" to "Costa's Guidelines" which appeared to be more lenient than "Henry's."

For every active colony of Red Cockaded Woodpeckers, "Costa's Guidelines" call for all three of the following within one-half mile radius:

- A minimum of 60 acres of suitable foraging habitat
- 2,950 sq. feet of basal area of pine trees greater than 10" DBH (diameter at breast height)
- A certain stem count of pine trees greater than 10" DBH

I hired a wildlife biologist who determined that I have 29 Red Cockaded Woodpeckers living in 12 active colonies. I hired a forester to cruise the timber. With this additional information, the wildlife biologist calculated that I have 1,121± acres that cannot be cut. The U. S. Fish and Wildlife Service accepted the wildlife biologist's report by letter dated July 25, 1994.

With this acceptance letter in hand, I hired a qualified real estate appraiser. He determined that the value of the land and timber in the 1,121 acres without woodpeckers would be \$1,685,000 and that the value of the land and timber with the presence of woodpeckers is \$260,000. Therefore, my loss in value, the difference, is \$1,425,000.

### THE U.S. FISH AND WILD LIFE SERVICE OFFERED ME A "DEAL"

Because of the loss of value of my timber and fear of additional loss, I told the U. S. Fish and Wildlife Service that I was going to change my past management practices and would begin to clear cut the rest of my property to prevent the expansion of woodpeckers on it.

Mr. Ralph Costa of the U. S. Fish and Wildlife Service offered me the following deal: "If I would maintain the existing habitat for the 29 birds, he would give me incidental-take rights on the rest of my property. " (This existing habitat is confirmed as 1,121 acres.)

I did not accept this "deal" because I would receive no compensation for the property required for the birds and I already have the right to cut timber on the rest of my property where there are no birds.

### MY COUNTEROFFER

Since I cannot cut the timber in the 1,121 acres of woodpecker habitat and the U. S. Fish and Wildlife Service will not compensate me for my losses, I want to give the Red Cockaded Woodpecker-infested land to my heirs to get it out of my estate. I requested that the Internal Revenue Service agree on a value of my affected land prior to my gift. The IRS has refused to pre-value my land so I can't risk giving the land to my children.

### CONCLUSION

By managing Cone's Folly in an environmentally correct way, my father and I created habitat for the Red Cockaded Woodpecker. My reward has been the loss of \$1,425,000 in value of timber I am not allowed to harvest under the provisions of the Endangered Species Act. I feel compelled to change my previous practices and massively clear cut the balance of my property to prevent additional loss. Finally, I plan to sue the U. S. Fish and Wildlife Service to try to recover my losses.



## NATIONAL FISHERIES INSTITUTE, INC.

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1525 WILSON BOULEVARD • SUITE 500 • ARLINGTON, VA 22209  
703 • 524 • 8880 • FAX, 703 • 524 • 4619

**STATEMENT  
NATIONAL FISHERIES INSTITUTE  
BEFORE THE**

**HOUSE COMMITTEE ON RESOURCES**

**ON H.R. 2275**

**SEPTEMBER 20, 1995**

My name is Chris Nelson. I am Vice President of Bon Secour Fisheries in Bon Secour, Alabama and the Regional Vice President of the National Fisheries Institute (NFI) for the Gulf of Mexico region.

The NFI appreciates this opportunity to testify on the Endangered Species Conservation and Management Act (H.R. 2275). We also wish to thank the Committee for holding field hearings around the country to hear directly from working Americans on why the Endangered Species Act needs to be reformed. The commercial fishermen from the Gulf of Mexico who had a chance to testify during these hearings, and who had an opportunity to discuss the issues with members of the Committee during your travels, appreciate the Committee's extraordinary effort.

The NFI represents 1,000 companies engaged in all aspects of the U.S. fish and seafood industry including harvesting, processing and marketing. Our members operate commercial fishing vessels in all major U.S. fisheries including the shrimp fisheries of the Gulf of Mexico and the South Atlantic. My family's company, for example, operates 11 shrimp trawlers and has been in the shrimp processing and oyster business for more than 100 years.

The seafood industry needs and supports strong conservation laws like the Endangered Species Act which recognize the vital role that conserving habitat plays in resource conservation. Many commercial fisheries, particularly those like the shrimp and oyster fisheries, depend upon nearshore habitats which can be hurt by pollution and coastal development. We also strongly support the Act's goals and believe that more needs to be done to recover species to healthy levels.

At the same time, our industry is heavily regulated under this Act and we know through painful first-hand experience that excessive and unnecessary costs can be imposed when this law is misused. We also know how much effort and money are being wasted in seemingly endless litigation.

The NFI believes that the reforms proposed in H.R. 2275 are long overdue and that they will help thousands of commercial fishermen who are struggling to make a living under increasingly onerous restrictions.

The need for a better planning and regulatory process is apparent. Realistic goals and priorities, for example, have not been established for sea turtles and way too much effort has been focused on shrimping rather than protecting nesting beaches. The result is that federal monies are being wasted.

Part of the problem is that listing decisions, recovery planning, habitat designations, jeopardy consultations, incidental take permitting and rulemaking, and enforcement priorities are reactive and uncoordinated. Another problem is that there is no clear process whereby all stake holders can interact with each other in an open and fair way. It seems the only time commercial shrimp fishermen get to meet with federal officials and animal protection groups under the Act is in federal court. Much more emphasis is needed in opening up the regulatory process to public participation and scientific peer review.

The new regulatory and planning process proposed in H.R. 2275, we believe, is a positive change.

We also are pleased, Mr. Chairman, that you haven't forgotten fishermen in those parts of the bill which refer to compensation.

The fishing gear restrictions which have been imposed under the Act cause fishermen to lose catch---how much is lost depends upon fishing conditions. We also face possible fishery closures because of incidental take of some species. A fishing vessel which loses part or all of its catch is worth less than a vessel which doesn't. Fishermen, we believe, should be treated the same way as other property owners who face substantial regulatory costs under this Act and H.R. 2275 does this.

We do, however, have several suggestions on how the bill might be strengthened.

First, we recommend that the present authority of the National Marine Fisheries Service under the Act with respect to marine species not be transferred to the Department of Interior as proposed in H.R. 2275. Instead, we recommend that this authority be retained by the National Marine Fisheries Service and that all authority over sea turtles be consolidated into that agency. Dividing authority over ocean species between two agencies leads to duplicate efforts which are wasteful and potentially disruptive.

Plants and animals interact with each other in the marine environment in many complex ways. Conserving them over the long-term requires comprehensive approaches and unique expertise under a single agency.

We agree with the decision of this Committee last week that the conservation and management of living marine resources should continue to be the responsibility of a single ocean agency with the necessary scientific expertise.

Second, we recommend that the bill be amended to encourage the use of incentives in the marine environment when these incentives result in a net benefit for the recovery of species.

Shrimp fishermen, for example, want to be part of "the solution" when it comes to recovering sea turtle populations. They have proposed a program which uses incentives to reduce fishing pressure in the nearshore fishing grounds where turtles concentrate, and increase fishing in offshore waters where turtles are rarely found. Such a program could be a win-win proposition benefiting both turtles and fishermen.

H.R. 2275 recognizes that incentives are an important conservation tool, and it includes provisions which apply on land. What's needed are a few changes to the bill to make the incentive concept work in the oceans as well.

Finally, we believe that more needs to be done to encourage international conservation. The sea turtles found in U.S. fisheries, for example, migrate through the waters of many nations. Earlier declines in their populations, which were caused by direct harvests in other nations, are an international problem---and so is the solution.

Multilateral standards are needed to protect nesting beaches, foster enhancement, and control direct and indirect turtle harvests. International standards, rather than the present unilateral regulations, would put all fishermen on a level playing field and would also foster the international cooperation needed to speed recovery of turtle populations.

Several Western Hemisphere nations, including the United States, are seeking an agreement this week in Mexico. If they are successful, we ask that the Committee consider including provisions in H.R. 2275 to facilitate its implementation and to foster the negotiation of similar agreements for other populations.

Thank you again Mr. Chairman for the opportunity to testify. The National Fisheries Institute looks forward to working with you to improve a law which is of critical importance to our industry.



**Pietro Parravano**  
President

**David Allen**  
Vice-President

**John Greenville**  
Secretary

**Don Sherer**  
Treasurer

**Please reply to:**

**Main Office**

11 P.O. Box 989  
Sausalito, CA 94066  
Tel: (415) 332-5080  
Fax: (415) 331-2722

**PACIFIC COAST FEDERATION  
of FISHERMEN'S ASSOCIATIONS**



**W.F. "Zeke" Grader, Jr.**  
Executive Director

**Nathaniel S. Bingham**  
Habitat Director

**Glen H. Spain**  
Northwest Regional Director

**Mitch Farro**  
Director of Enhancement  
Projects

**Office of the President**

11 P.O. Box 340  
El Granada, CA 94018  
Tel: (415) 726-1607  
Fax: (415) 726-1607-3\*

**Habitat Office**

11 P.O. Box 783  
Mendocino, CA 95460  
Tel: (707) 937-4145  
Fax: (707) 937-2617

**Northwest Regional Office**

11 P.O. Box 11170  
Eugene, OR 97440-3370  
Tel: (503) 689-2000  
Fax: (503) 689-2500

**STATEMENT OF THE  
PACIFIC COAST FEDERATION  
OF  
FISHERMEN'S ASSOCIATIONS  
TO THE  
HOUSE COMMITTEE ON RESOURCES**

**Washington, DC**

**September 20, 1995**

**H.R. 2275 -- The Endangered Species Conservation  
and Management Act of 1995**

My name is Glen Spain. I am the Northwest Regional Director for the Pacific Coast Federation of Fishermen's Associations (PCFFA), the largest organization of commercial fishermen on the west coast, with member organizations from San Diego to Alaska. We represent thousands of working men and women who are commercial fishermen in the Pacific fishing fleet and who are the economic mainstay of many coastal communities and cities. PCFFA represents several billion dollars annually in economic interests which generate tens of thousands of family wage jobs -- not only in coastal communities, but far inland as well. We are the men and women who help put fresh, high-quality seafood on America's table, create a job base for coastal communities, and help support federal, state and local community services through our taxes.

The commercial fishing industry as a whole is a major economic power throughout this country, accounting for well over \$50 billion in economic impacts and more than 700,000 jobs. When combined with another \$15 billion per year generated by the marine recreational fishery, the whole



STEWARDS OF THE FISHERIES

offshore fishing industry now accounts for about \$65 billion per year to the U.S. economy<sup>1</sup> In addition to commercial fishing, the recreational sportfishing industry also contributes a mighty share to the U.S. economy Fishing -- whether for sport or commercially -- is big business, with a combined economic input to the national economy in excess of \$111 billion and supporting 1,500,000 family wage jobs<sup>2</sup>

Most of these jobs are to one degree or another dependant upon strong protection of the biological resources upon which they are based **In other words, our industry would not exist -- nor would \$111 billion dollars in annual income and 1.5 million jobs in this economy that we generate -- without strong environmental protections.** Our industry is a prime example of a basic economic principle:

*The fundamental source of all economic wealth is the natural environment. In the long-run environmental protection does not destroy jobs -- it creates them and maintains them on a sustainable basis for the future.*

The biological wealth of this country is its "natural capital" Like any economic capital, we can invest it wisely or we can allow it to dissipate and waste Pushing species to the brink of extinction -- and beyond -- not only wastes future economic opportunities but **helps destroy those industries we already have**, such as the Pacific salmon fishing industry The ESA is the law of final resort that prevents us as a society from negligently wasting our irreplaceable "natural capital" -- and the jobs that this "natural capital" represents, both in the present and in our economy's future

The ESA dispute is not really a clash between owls vs jobs, nor between public trust values vs private property rights -- *fundamentally, the ESA dispute is a clash between short-term profiteering vs. long-term and sustainable economic development.* The ESA merely establishes limits beyond which voracious human consumption should not go That limit is the limit of "biological sustainability" ***This is also the basis of economic sustainability as well*** As a society, we violate nature's biological limitations at both our biological and our economic peril Each species pushed into extinction is first and foremost a loss to the very fabric of our human food chain However it also represents a lost future economic opportunity effecting our entire economy The biological diversity of our natural resources represents the foundation upon which many industries of the present are maintained, but also upon which industries of the future will be built and people of the future will be fed Wasting our "natural capital" dramatically impoverishes our society by limiting our future

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<sup>1</sup> Economic figures from *Our Living Oceans. Report on the Status of U.S. Living Marine Resources*, 1992 NOAA Tech Mem NMFS-F SPO-2, National Marine Fisheries Service, NOAA, U.S. Dept. of Commerce, Washington, DC. See also *Analysis of the potential economic benefits from rebuilding U.S. fisheries* (1992), National Marine Fisheries Service, NOAA.

<sup>2</sup> From *Fisheries, Wetlands and Jobs: The Value of Wetlands to America's Fisheries*, a report by William M. Kuer Associates (March, 1994) for the Campaign to Save California Wetlands. See also Feder, A.J. and D.M. Niskum, *The 1991 Economic Impact of Sport Fishing in the United States*, by the Sportfishing Institute, Washington, DC.

industrial growth<sup>3</sup>

The commercial fishing industry has seen the Endangered Species Act up close and in operation for many years. Our industry is a highly regulated industry. We are, for instance, *far* more regulated under the Endangered Species Act (ESA) than the Northwest timber industry. While the timber industry has recently suffered through curtailments caused by one or two ESA listings, the fishing industry has long been dealing with the impacts of listings for chinook salmon in both the Columbia and Sacramento Rivers, sockeye salmon in the Columbia, sea turtles in the Gulf, and various marine mammal species protected under *both* the ESA and the Marine Mammal Protection Act (MMPA). On the west coast, we are also facing the imminent prospect of coastwide listings for coho salmon, chinook salmon and *every other anadromous salmonid on the west coast*. The effects of these upcoming listings will potentially be *far* more restrictive than any past restrictions caused by spotted owls or murrelets.

**There is, in fact no industry more regulated under the ESA presently, nor more likely to be regulated in the foreseeable future, than the commercial fishing industry. And yet (in spite of short-term dislocations) we view the protections offered by the ESA as vitally important in protecting and preserving our industry, our jobs and our way of life for the long term. It is species declines which are the enemy, not the ESA.**

Species only qualify for listing under the ESA *because they are seriously declining*. They get listed because they face extinction. This point seems to have been missed by many who are calling for the elimination or curtailment of ESA protections. The best way to prevent listings, then, is to prevent the species' decline in the first place. Limiting or repealing the ESA itself only throws out the primary tool to achieve recovery, but does nothing to reverse declines. The ESA is only the warning bell and not the problem itself. Disconnecting the warning bell is not a viable response to an emergency in the making.

#### 72,000 SALMON JOBS AT RISK – SALMON AS A CASE IN POINT FOR HOW THE ESA PROTECTS JOBS

Salmon, once the economic mainstay of both the commercial and recreational fishing industry in the west as well as the east coast, have been reduced by decades of short-sighted human actions to a mere shadow of their former glory, largely as a result of a multitude of cumulative on-shore causes

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<sup>3</sup> The fishing industry is but one example. Fully 40% of the known medical valuable pharmaceuticals, for instance, are derived from natural sources. This represents an industrial economy, also in the hundreds of billions of dollars worldwide, as well as many millions of lives saved. Yet only about 1% of all the plant species now known have been adequately surveyed for their pharmaceutical value, and only a small fraction of plant species have been categorized. *Many will likely become extinct before that can be accomplished.* The booming biotechnology industry is also another example. Their stock in trade is genes. These genes, however, *can only come from known natural sources* – even the simplest gene is millions of times too complex to synthesize in the laboratory, by any known technology. Unknown plant species may contain genes for disease resistance worth billions to a failing crop industry, or worth billions more for any of a number of other unknown and as yet undiscovered industrial processes. Once extinct, however, the potential uses of the organism will never be known. Every species driven to extinction gives us fewer economic options.

The great salmon runs of the east coast are all but gone, more than 98% of those runs now extinct <sup>4</sup> Salmon in east coast restaurants are almost always inferior Norwegian salmon raised artificially -- which exports to Norway thousands of jobs that *should have belonged to American fishermen*

The destruction of salmon spawning and rearing habitat has also been ongoing and pervasive in the west for many decades -- it is just a few years behind the east coast but going along the same path leading to extinction. Every year fewer and fewer salmon survive the silting up of their spawning grounds by inappropriate logging, grazing and road building practices. Fewer still survive the nightmare ride through hydropower turbines and slack-water reservoirs in the more than 30 major federal and state Columbia River Basin hydropower dams. In the eight federally operated Columbia and Snake River mainstem dams alone, each dam's turbines kill up to 20% of the outmigrant fish making their long journey to the sea <sup>5</sup>. 3,000 miles of prime salmon spawning streams in the Sacramento Basin have now been reduced to less than 300, and much of what remains is biologically damaged or suffers from too little cold water during critical spawning times.

The relatively few wild salmon which remain alive after all these accumulated impacts are then subject to otherwise natural ocean fluctuations (El Ninos) which combined with all the upstream human-caused assaults can be the final blow on an already highly stressed salmon ecosystem. Once the numbers of salmon in a stream drop below a certain threshold the remaining fish cannot reliably find each other to mate. Even though many fish remain, the run has then dropped into what is called the "extinction vortex" and numbers drop precipitously from that point onward -- only major intervention can then save them. This is precisely what seems to be happening over much of the coast.

Salmon are the most sensitive to their environment in the egg stage and as juveniles when they are still in freshwater streams just after spawning. Some species (such as coho salmon) spend a fairly long time in freshwater streams since they must "overwinter" there for up to 18 months before migrating out to sea. Even once they leave these freshwater streams, salmon must still spend additional time in coastal wetland estuaries and marshes in order to gradually adapt to life in salt water. They are "anadromous" fish, which means they are hatched in freshwater, then adapt to salt

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<sup>4</sup> The last remaining wild salmon runs in the eastern coast of the U.S. are in New England. These have recently been petitioned for protection under the ESA. *There are in fact more dams in New England that there are individual adult salmon returning to your rivers* -- about 2,500 wild salmon still return to New England, while there are about 3,000 medium and small dams in the same area.

<sup>5</sup> Both the impacts from upper watershed activities (improper logging, overgrazing, road washouts, etc.) and the impacts from the hydropower turbines are largely avoidable. Many of these practices are obsolete and unnecessary, and profits in these industries will not greatly suffer from curtailing or mitigating these problems. The externalized damage caused by these poor management practices is, in many cases, more of a harm to society (and to the very industry itself) than any conceivable short-term benefits. As an industry ourselves, we are very sympathetic to the current plight of timber workers (many of whom are also fishermen) -- however, it is clear that short-sighted logging, grazing and hydropower practices conducted without any regard to stream protection has been disastrous for our industry and many coastal communities. Most of the federal hydropower dams were built without downstream salmon passage, and some (such as the Grand Coulee Dam) without any upstream passage whatsoever. Salmon are now totally extant above Grand Coulee Dam, and this extinction was designed into the system. The fishing industry is federally regulated on the basis of biological sustainability (Magnuson Act). It is time that these other industries were as well. The current dislocations in these industries are fundamentally caused by past unrestricted overuse of their resource which now has to be balanced out and made more sustainable. The historical rate of timber harvesting over the last few decades has been many times what is biologically sustainable without doing major environmental damage to other industries. The fundamental problem with the timber supply is that after decades of overcutting old growth timber, the timber industry is simply out of big trees.

water, then return again to freshwater to spawn. In the ocean they are relatively large and relatively safe, but in inland streams they are subjected to every environmental problem created by mankind, in addition to natural predation and other natural impacts. Salmon evolved for drought, for El Niños, to avoid predators -- but have not evolved to prevent themselves from being sucked into irrigation pumps, nor from being destroyed by hydropower turbines, nor stranded without water in unscreened irrigation ditches. They also have not evolved to survive water pollution, oil spills and the many other unfortunate environmental problems created by modern civilization.

Roughly speaking, we have lost about 80% of the productive capacity of salmon streams in the west coast as a direct result of various causes of watershed destruction. According to a 1991 comprehensive scientific study by the prestigious American Fisheries Society, at least 106 major populations of salmon and steelhead on the West Coast are already extinct. Other studies place the number at over 200 separate stock extinctions in the Columbia River Basin alone. The AFS report also identified 214 additional native naturally-spawning salmonid runs at risk of extinction in the Northwest and Northern California: 101 at high risk of extinction, 58 at moderate risk of extinction, and another 54 of special concern, plus 1 run already ESA listed<sup>6</sup>. In a recent extensive GIS mapping study of present habitat occupied versus historical habitat, based on the AFS data and updates, the data indicated the following distributions across the landscape.

**Status of Salmon Species in the Pacific Northwest & California  
Current Distribution as a Percentage of Historic Habitat**

Species	Extinct	Endangered	Threatened	Special Concern	Not Known to be Declining
Coho	55%	13%	20%	5%	7%
Spring/Summer Chinook	63%	8%	16%	7%	6%
Fall Chinook	19%	18%	7%	36%	20%
Chum salmon	37%	16%	14%	11%	22%
Sockeye	59%	7%	3%	16%	15%
Pink salmon	21%	5%	<1%	<1%	73%
Sea-run Cutthroat	6%	4%	61%	29%	0%
Winter Steelhead	29%	22%	7%	18%	24%
Summer Steelhead	45%	5%	5%	27%	18%

**According to GIS mapping, Pacific Northwest salmon are already extinct in 38% of their historic range, between 50-100% of these species are at risk or extinct in 56% of their historic range, and in only 6% of their historic habitat range are fewer than 50% of these salmon**

<sup>6</sup> Nelson, et al., 1991. "Pacific Salmon at the Crossroads: Stocks at Risk from California, Oregon, Idaho, and California." *Fisheries* 16:2(4-21).

**species at risk or extinct.**<sup>7</sup> The conclusions of this study (the best and most complete to date) are chilling — 9 out of 10 known species of Pacific salmon will be extinct in the lower 48 states in the near future unless land use patterns pressing those stocks toward extinction are reversed.<sup>8</sup>

The productive capacity of the salmon resource has always been enormous. Even as recently as 1988, and in spite of already serious existing depletions in the Columbia and elsewhere, the Northwest salmon industry (including both commercial and recreational components) still supported an estimated 62,750 family wage jobs in the Northwest and Northern California, and generated \$1.25 billion in economic personal income impacts to the region.<sup>9</sup> An additional estimated job loss from the Columbia River declines alone had already occurred by the 1988 baseline year, amounting to another \$250 -- 505 million in economic losses per year as well as the destruction of an additional 13,000 to 25,000 family wage jobs. These jobs had already been taken out of the economy as a direct result of dam-related salmon declines in the Columbia basin prior to 1988.<sup>10</sup>

Hydropower and irrigation dams are probably the major leading factor in the collapse of the salmon fishery on this coast. Historically almost one-third of all west coast salmon were produced in the Columbia and Snake river systems, making that river the richest salmon production system in

<sup>7</sup> From GIS survey maps prepared by scientists on contract to The Wilderness Society, and published in The Wilderness Society's report *The Living Landscape: Pacific Salmon and Federal Lands (Volume 2)*. Published by the Bolle Center for Forest Ecosystem Management (October 1993). The report and data were peer reviewed.

<sup>8</sup> The one exception was pink salmon, which only now occurs in the extreme upper portion of the Puget Sound area in limited populations. These are also (incidentally) the areas least affected by development since much of that area is in Olympic National Park — emphasizing the direct correlation between salmon production and intact watershed ecosystems.

<sup>9</sup> Figures taken from *The Economic Imperative of Protecting Riverine Habitat in the Pacific Northwest* (Report 5, January, 1992) published by the Pacific Rivers Council, based on official federal statistics from the Pacific Fishery Management Council. The fishery related job breakdown by state, according to that report, was as follows:

State	Commercial	Recreational	Total
Oregon	4,450	9,500	13,950
Washington	6,800	14,250	21,050
N. California	4,000	19,000	23,000
Idaho	Negligible	4,750	4,750
Pacific Northwest Total	15,250	47,500	62,750

Commercial fishery jobs are heavily concentrated in coastal areas. Recreational fishery jobs, while a larger number, are more diverse and are distributed more diffusely throughout inland communities.

<sup>10</sup> From a report titled *The Costs of Doing Nothing: Externalized Costs to the Northwest Fishing Economy of the Current Operations of the Columbia River Hydropower System*. Institute for Fisheries Resources (2/10/95) draft report (unpublished), based on figures from a very recent study by Dr. Hans Radtke, Ph.D., a natural resources economist on contract to the Institute. Completion of the last main-stem federal hydropower dams was in the late '70s, and none were built with adequate fish passage. That study concluded that salmon losses in the Columbia Basin to date have amounted to the removal from the regional economy of between 13,000 and 25,000 jobs annually at a cost to the economy of between \$250 to 505 million dollars annually, which translates to the loss of natural capital assets of up to \$13 billion.

the world. Now, however, in the Columbia and Snake rivers the hydropower system accounts for at least 90% of all human-induced salmon mortality, *as opposed to only about 5% for all commercial, recreational and tribal fisheries combined*. Official figures from the Northwest Power Planning Council indicate that the Columbia River dams kill the equivalent of between 5 million and 11 million adult salmon every year, with several million more killed by a variety of habitat loss factors in the upper watersheds of the region<sup>11</sup>. Many millions more fish are killed in the Central Valley Project and in the Klamath Basin by loss of in-stream flows and many of the same habitat loss factors.

Another problem is wetland losses throughout the west coast. California has already lost 91% of its original wetlands, Oregon has lost 38% and Washington has lost another 31% and the remaining percentages of original wetlands have been severely compromised in their biological functions<sup>12</sup>. These wetlands are vital in protecting overwintering salmon, helping them survive droughts and (for saltwater wetlands) helping them adapt to ocean conditions. A main factor in the destruction of the coastal salmon stocks in the Northwest has been the rampant destruction of the area's wetlands. Loss figures for the most valuable coastal and estuarine wetlands are much greater than the overall state loss averages.

#### ESTIMATES OF SALMON JOB LOSSES DUE TO LACK OF PROTECTION OF SALMON RESOURCES

With one major exception<sup>13</sup> off central California, and a few very minor mostly sportfishing exceptions in Washington and Oregon, the entire ocean going salmon fleet was closed down in 1994 and 1995 because of these declines, particularly of coho. Most of the coast is still under a Secretary of Commerce "Declaration of Fishing Emergency" for this reason. Even with some harvests returning in central California, we estimate that coastwide we have **still lost 90% of our income from the commercial fishery** as compared to the 1976-1993 averages -- which translates to loss of 90% of the jobs created by the commercial salmon industry as a whole. The recreational salmon fishing industry has also suffered a similar decline of 70% in that same time period, with some areas (such as central Oregon) also suffering complete closures. While there is some mismatch of figures (due to different averaged years) these two figures combined will give us a pretty good estimate of total salmon industry job losses since 1988. Doing the calculation we get job losses as follows:

<sup>11</sup> Northwest Power Planning Council publication *Strategy for Salmon*, Vol 2, page 17 and Appendix D & E.

<sup>12</sup> Facts on wetland losses by state from a report by the U.S. Dept. of Interior entitled *Wetland Losses in the United States, 1780 to 1980* by Thomas Dahl. California has lost a higher percentage of its wetlands than any other state. If only coastal or estuarine wetlands is included in these figures, each state's wetlands losses would be much greater.

<sup>13</sup> The near record salmon harvest this year in Central California is an instructive exception to these decline trends. The primary cause of those increases has probably been water reforms in the Central Valley, driven by the listing under the ESA several years ago of the devastated native runs of Sacramento winter-run chinook salmon and the delta smelt. Although some of those reforms are now embodied in the Central Valley Project Improvement Act, the ESA listing predates the CVPIA by several years. Thus, many of those same water reforms began to kick in *prior* to the passage of the CVPIA, *earlier* than three years ago -- *about the time it takes for a generation of salmon to mature*. Greater in-stream smolt survival coupled with fortunate ocean conditions have thus given us a large harvestable run while other areas where habitat loss and water diversions still continue are still in decline.

15,250 x 90% = 13,725 jobs lost since 1988 in the commercial salmon fishery  
 47,500 x 70% = 33,250 jobs lost since 1988 in the recreational salmon fishery  
 46,975 jobs lost overall since 1988

In addition, habitat losses and hydropower mortality in the Columbia and Snake rivers have also resulted in up to 25,000 lost jobs. Adding these lost jobs to the above figures for losses in the Columbia River which occurred even before 1988 indicates a total west coast job loss within the last two decades of approximately 72,000 family wage jobs.

**In other words, roughly 47,000 jobs have been lost in the northwest Pacific salmon fishing industry (including both commercial and recreational) just since 1988, with a total of 72,000 fishing-generated family wage jobs lost — including losses due to the current operations of the Columbia and Snake river hydropower system — over the past two decades.**

Overfishing is not a likely cause of these declines. Had overfishing been a major contributing factor in salmon declines (as some have claimed) then past harvest closures should have resulted in substantial rebuilding of populations. However, there is no evidence that these closures resulted in substantial population increases — indicating that the limiting factors are in the watersheds, not in ocean or in-river harvest levels.<sup>14</sup> There are also a number of other indications leading to the same conclusion, including: (a) the most precipitous declines have occurred primarily in the most inshore habitat sensitive species (coho salmon) as opposed to chinook salmon which spend much less time in inland watersheds and whose populations are still relatively robust, (b) precipitous declines have also occurred in species for which there is no sport or commercial harvest (searun cutthroat) but which originate in inland watersheds in which there has been substantial human disturbance (primarily clearcut timber harvesting and increased stream siltation from logging road washouts).

When seasons remain closed, the enormous economic investment already put into the Pacific fishing fleet goes to waste. Just in the Columbia River gillnet fleet alone an estimated \$110 - \$129 million dollars in capital assets is invested.<sup>15</sup> The in-river gillnet fleet is only a relative handful of small boats and its capital investment is certainly only a very small fraction of the overall capital invested in the entire ocean salmon fishing fleet. This figure does not even include buyer and processor investment. Additional salmon extinctions essentially mean the bankruptcy of many fishing

<sup>14</sup> Dr. Chris Frissell, who did much of the GIS mapping for The Wilderness Society's report cited above, took an independent look at whether harvest reductions were a significant factor in population dynamics for coho salmon. If overfishing were a significant cause of population declines, then harvest reductions should be effective in rebuilding depleted stocks. He concluded in his analysis as follows.

"Overfishing is often cited as a principle factor causing decline of salmon runs. However, there are few historical or recent records to indicate that curtailment of fishing has led to increased spawning abundance of coho salmon. For example, curtailment of fishing seasons has been thought to have reduced harvest-related mortality rates on Oregon coastal coho substantially during the past decade. However, there has been no evidence of increased spawner escapement during this period, suggesting that fishing curtailment is at best merely keeping pace with rapid habitat deterioration and declining productivity of coho populations."

(Pacific Rivers Council petition for the coastwide listing of coho salmon, dated 10/19/93).

<sup>15</sup> Figures from Dr. Hans Radtke, Ph.D., fisheries resource economist.



communities and the waste of a tremendous capital investment built up over generations<sup>16</sup>

Again these extinctions represent lost jobs, lost family income and lost local tax revenues suffered by fishing communities as a result of poor environmental protection of Northwest salmon. These losses are being suffered by real people, many of them third or fourth generation fishermen, who suddenly find they cannot feed their families, pay their home and boat mortgages or help maintain their communities. Better protection of salmon and their habitat (through the ESA and other strong environmental laws) will help restore these 72,000 jobs to the region and rebuild these local economies.

### WHY THE FISHING INDUSTRY NEEDS THE ENDANGERED SPECIES ACT -- \$111 BILLION/YEAR AND 1.5 MILLION JOBS AT RISK

Most fish species spend only part of their lives in mid-ocean. During their juvenile stage, most live and thrive in the nearshore environment of streams, rivers and estuaries. Some, like salmon, reproduce and grow far inland in fresh water streams hundreds of miles from the ocean. However, salmon are just one example of commercially valuable species that are also dependent on inshore or nearshore habitat quality.

All around the country, *our industry is utterly dependent on species which themselves require healthy watersheds and estuaries for the most critical parts of their life cycle*. Nearshore waters, including rivers, streams and coastal wetlands, are essential nursery areas for fully 75% of the entire US commercial fish and shellfish landings. These sensitive ecosystems are valuable national assets which contribute about \$46 billion per year to the US economy in biological value (including natural flood control and filtration of pollutants), as well as providing its healthiest food sources. Salmon are only one part of this whole economic picture, and only one of many commercially valuable species which need protection. The bottom line protection of all these species is the Endangered Species Act.

All the nation's \$111 billion fisheries have been put at risk as a result of the continuing destruction of fish habitat in the nation's rivers, estuaries and coastal ecosystems. This destruction has led to billions of dollars in lost revenue to the nation every year, lost employment, lost food production, and

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<sup>16</sup> There is also a cascading effect of these salmon declines which impact Alaska's economy as well. Fishing is the leading industry in Alaska, greatly exceeding timber production as a source of economic support for its communities. Much of that fishing industry is now threatened because of international disputes with Canada over the collapse of the Pacific Salmon Treaty (PST). That treaty collapsed primarily because of salmon losses in the lower 48 states (particularly the losses from the Columbia). Oregon and Washington salmon tend to migrate north toward colder water. Under the PST as presently written, for every Canadian-origin fish caught in Alaskan waters, *Canadian fishermen are supposed to be able to catch a U.S.-origin fish swimming north into Canadian waters from the lower 48*. However due to widespread salmon declines in the lower 48 those replacement fish are much fewer in number than the fish Canada is losing to the Alaskan fleet. Thus the Canadians are demanding cutbacks in the Alaskan catch to balance out their own losses. The Canadians are quite capable of enforcing these cutbacks through mandatory transit fees (already imposed for a short time last year) or even gunboat boardings on the high seas (as in the east coast's "Turbot War" between Canada and the European Union just a few months ago). To date the only thing that has driven salmon recovery efforts in the lower 48 is the threat or reality of ESA listings. *Without a strong ESA-driven recovery of these depleted lower 48 stocks there is no hope of Alaska avoiding an ongoing "fish war" with Canada with no end in sight*. Were the ESA itself to disappear, this international problem would still force shutdowns of much of the salmon harvest in Alaska within the next few years. It would be required not by the laws of Congress but by the laws of nature.

lost recreational opportunities. The collapse of the salmon fishery is only a small part of this overall habitat loss problem.

*Nor is coastal habitat loss the only problem. Our entire inland freshwater fish resource is also in serious trouble.* According to studies by the prestigious American Fisheries Society, roughly one-third of 790 known species of freshwater fish in the U.S. are in danger of extinction or of special concern. In the case of a whole family of nonanadromous (i.e., resident) salmonids, more than 50% of all known U.S. species in that family are close to extinction. Within the largest known family of fish (the *Cyprinidae*), which include 29.2% of all known fish species in the U.S., the number of species classifiable as endangered (7.2%), threatened (9.4%), of special concern (10.8%) or already extinct (3.3%) totals 30.7% of this entire large family of fish species. Of the 18 states with greater than 10 imperiled fish species, 10 are located in the South and 5 in the West. The 11 states with the highest number of imperiled fish species are (in descending order) Nevada (43), California (42), Tennessee (40), Alabama (30), Oregon (25), Texas (23), Arizona (22), Virginia and North Carolina (21 each), and Georgia and New Mexico (20 each)<sup>17</sup>

*This country is in the midst of an ecological disaster which is causing tremendous economic losses throughout the nation in this and many other resource dependent industries. The large number of the nation's fish and wildlife which qualify for listing under the ESA is just the symptom of this overall disaster.*

The Congress and the Administration need to make a serious commitment to the protection of those habitats and ecosystems that determine the future productivity of fish and shellfish resources in the U.S. If this commitment is made, at least a doubling of anadromous fish and other near shore dependent marine fish and shellfish populations of the "lower 48" states can be expected. This could produce an additional \$27 billion in annual economic output (above and beyond the current level of \$111 billion) and more than 450,000 new jobs.<sup>18</sup>

Environmental regulations exist because after decades of neglect and pollution, policy makers finally realized that a healthy environment is the ultimate source of the nation's economic wealth, its food and the well-being of its citizens. When all other efforts to save these valuable biological resources fail, however, the final safety net is the Endangered Species Act (ESA). In spite of the problems the ESA has created for individual fishermen, it is also the last hope for the restoration of whole industries (such as salmon fishing) in many areas. Without a strong ESA, the only available remedy for species recovery is closing down the fishery, even though the real problems lie elsewhere

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<sup>17</sup> American Fisheries Society, "Status of Freshwater Fishes of the United States: Overview of an Imperiled Fauna." *Fisheries*, Vol. 19, No. 1 (January, 1994).

<sup>18</sup> Figures from *Marine Fishery Habitat Protection - A Report to the U.S. Congress and the Secretary of Commerce* (March 1, 1994), copublished by the Institute for Fisheries Resources, East Coast Fisheries Foundation and PCFFA, with extensive citations. Copy available from PCFFA upon request.

with the loss of habitat <sup>19</sup>

This is exactly what has happened to the salmon industry to date -- as onshore habitat declined, as fewer and fewer fish survived to even reach the ocean, it has been the fishermen who have been cut back over and over again, and who have almost singlehandedly paid the price of inland environmental destruction on a massive scale. This is because under the Magnuson Act fishery managers can only manage fishermen -- they have no legal jurisdiction over actions onshore which destroy the biological foundations of the fishery itself. Only the ESA gives them that authority.

**Thus without a strong ESA, there will never be salmon recovery in the Northwest, and the approximately 72,000 lost salmon jobs -- which the salmon resource could still generate in this region with proper protection of the resource -- would be gone forever. Salmon mean business, and it pays to protect them. Without the ESA to drive recovery, however, you can kiss the entire Northwest salmon industry -- and many other components of the entire nation's fishing industry -- goodbye!**

The fishing industry represents a major economic force which is dependent upon a healthy environment. The ESA is not the enemy, it is only the messenger. Listing a species is like dialing the 911 number when you need an ambulance. It should be used rarely, but when it is needed it is real handy to have an emergency number to call. Often it is the difference between life and death.

#### **THE "ENVIRONMENT VS. JOBS" ISSUE IS A FALSE DICHOTOMY -- THE ESA DOES NOT CAUSE SUBSTANTIAL ECONOMIC DISRUPTION**

There is absolutely no evidence that the ESA seriously impacts state or regional economies, and every reason to think that it does not. For instance, a recent study by the MIT Project on Environmental Politics and Policy, which looked at the statistical relationship between the number of species listed in each state as compared to that state's economic performance (over the period of 1975-1990) concluded:

"The data clearly shows that the Endangered Species Act has had no measurable economic impact on state economic performance. Controlling for differences in state area, and extractive industry dependence the study finds that states with the highest numbers of listed species also enjoyed the highest economic growth rates and the largest increases in economic growth rates. The one and a half decades of state data examined in this paper strongly contradict the assertion that the Endangered Species Act has had harmful effects on state economies. Protections offered to threatened animals and plants do not impose a measurable

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<sup>19</sup> Nowhere in the nation is the link between inland environmental protection and fish production more obvious than in the Gulf states, where National Marine Fisheries Service scientists estimate that 98% of the Gulf commercial seafood harvest comes from inshore, wetlands dependent fish and shellfish. Louisiana's marshes alone produce an annual commercial fish and shellfish harvest of 1.2 billion pounds worth \$244 million in 1991. Gulf shrimp clearly head the list of the region's wetlands dependent species. Without strong wetlands protection this extremely valuable commercial fishing industry resource would eventually no longer exist in those states. The shrimp industry is learning to cope with TED's and other devices to minimize unwanted bycatch problems. A far greater threat to that industry comes from estuary and wetlands habitat loss. The ESA is a tool which (in the last resort) can be used to halt and reverse these losses and protect that industry.

economic burden on development activity at the state level. In fact the evidence points to the converse."

The author of that study also noted that actual ESA listings are themselves only affecting a very small number of development projects undertaken and that, in economic context, these impacts are very small indeed in comparison to other much more major factors.

"In fact, for every tale about a project, business, or property owner allegedly harmed by the efforts to protect some plant or animal species there are over one thousand stories of virtual 'non-interference.' In reviewing the record of 18,211 endangered species consultations by the Fish and Wildlife Service/National Marine Fisheries covering the period 1987-1991 the General Accounting Office found that only 11% (2050) resulted in the issuance of formal biological opinions. The other 89% were handled informally -- that is to say the projects proceeded on schedule and without interference. Of the 2050 formal opinions issued a mere 181 -- less than 10% -- concluded that the proposed projects were likely to pose a threat to an endangered plant or animal. And most of these 181 projects were completed, albeit with some modification in design or construction. In short, more than 99% of the projects reviewed under the Endangered Species Act eventually proceeded unhindered or with marginal additional time and economic costs. Given the political and economic screening that occurs in listings cases it is not surprising that no measurable negative economic effects are detectable.

Furthermore local economic effects must be considered in context. Hundreds of state and federal policies have far more injurious impacts on local economies than wildlife protection. For example, the recent series of military base closings have had economic effects hundreds of times greater than all the listings during the 20-year life of the Endangered Species Act. Even greater economic and social harm resulted from the ill-conceived deregulation of the savings and loan industry during the 1980's. The number of jobs lost to leveraged buy-outs in the 1980's exceeds by many times the wildest estimates of jobs lost to endangered species, and no social good was accomplished in any of these cases."<sup>20</sup>

In the case of the fishing industry, as well as many other environment-dependent industries, judicious application of the ESA to protect the biological resources we depend upon can add a substantial number of jobs to the regional economy. At least 72,000 additional salmon-generated family wage jobs can be restored to the Pacific Northwest by taking steps under the ESA to restore and recover the great salmon runs which once made this region the envy of the world. Without the ESA to drive recovery, however, this economic revitalization would likely never happen.

FOR COMMENTS ON SPECIFIC BILL LANGUAGE -- SEE ATTACHMENT A

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<sup>20</sup> Stephen M. Moyer (March 1995). *Endangered Species Listings and State Economic Performance*. Massachusetts Institute of Technology. Project on Environmental Politics and Policy. Facts on actions cited from US General Accounting Office (1992) *Endangered Species Act: Types and Numbers of Implementing Actions* (GAO RECD-92-1311NR).

**STATEMENT OF THE  
PACIFIC COAST FEDERATION  
OF  
FISHERMEN'S ASSOCIATIONS  
TO THE  
HOUSE COMMITTEE ON RESOURCES**

by  
Glen H. Spain  
Northwest Regional Director

Washington, DC  
September 20, 1995  
H.R. 2275 -- The Endangered Species Conservation  
and Management Act of 1995

**ATTACHMENT A -- SUPPLEMENT TO WRITTEN STATEMENT  
SPECIFIC COMMENTS ON H.R. 2275 BY SECTION**

PCFFA is the largest trade association of commercial fishermen on the west coast, representing many thousands of fishing families coastwide. Commercial fishing is this nation's oldest industry. The food production, the jobs, the health of coastal economies, the commerce and the exports it represents *depends on the protection of this nation's basic biological heritage*. Fishing contributes

**\$11 billion annually to this country's economy and provides jobs for one and a half million Americans.** Without protection of this nation's aquatic resources, most of those jobs will be gone

The fishing industry is highly regulated under the ESA, so we know first hand that there are areas where the ESA needs improvement. In spite of its problems, however, we believe the Endangered Species Act is instrumental in protecting the basic biological heritage which supports our coastal and inland fishing economies. Although the ESA clearly needs to be made more workable and certainly should also be far better funded, H.R. 2275 in its present form is far too radical an approach which would result in far too little protection at far too much taxpayer expense. Our natural environment is the ultimate source of this nation's wealth, its "natural capital," and it simply makes economic sense to protect it. Allowing whole chunks of our natural heritage to go extinct is nothing more than the deliberate wasting of society's irreplaceable "natural capital," and a form of economic suicide.

While there are a number of procedural streamlinings in H.R. 2275 that we could support in principle, the problem is that these gains are far outweighed by its radical and totally unnecessary departure from current law. Among other provisions in this bill that are simply unacceptable are provisions that would do the following:

- \*\* **Section 202: Redefines "take" of a listed species specifically to overturn the recent US Supreme Court Sweethome decision and make it virtually impossible to protect species' habitat on private lands.** Species also cannot exist without habitat. Destroying an animal's habitat (i.e., its source of food and shelter) is just as effective a death sentence as if it were shot outright. One of the main recommendations in the recent National Academy of Sciences report "Science and the ESA" was the protection of habitat. Without habitat protection extinction is just a matter of time.

As a recent GAO report points out, more than 90% of species now listed as threatened or endangered rely at least in part on non-federal lands for survival. Fully 2/3rds of the habitat used by Northwest salmon, for instance -- and by far the most damaged habitat -- is on private lands. Salmon swim throughout their entire watershed -- they do not stop at national park boundaries. It thus makes no sense to be protecting their habitat only on federal lands while encouraging their destruction just downstream. Many species (including several valuable salmon runs) exist only on nonfederal lands. The requirement that only federal lands could be used to protect listed species, coupled with elimination of private lands habitat protection, amounts to a death sentence for many of these species.

Under the bill as written, critical habitat could only be designated on private lands by the consent of the landowner or where the landowner is compensated by the US Treasury as a "taking." Otherwise (Sec. 601) all critical habitat would be pushed onto those federal lands eventually designated as "Federal Biological Diversity Reserves." Even then, however, under current laws (which this law specifically does not supersede) most of these federal lands would still have to be made available for such activities as logging and grazing -- activities which in many instances are a major contributing factor in the declines of these species to begin with.

**\*\* Section 501: Planning for extinction --Abandoning the ESA's central goal of recovery.**

The Act's recovery mandate would collapse in favor of various totally 'discretionary' conservation actions by the Secretary, *including doing nothing at all*. The process of both listing and conservation would no longer be driven by the best available science but by the strongest political lobby. Conservation plans would be driven primarily by a cost vs. Benefits analysis, and any species with less known economic value than the cost of conservation would be allowed to go extinct.

Critical habitat has been completely redefined not in terms of what is needed for the recovery of the species but rather (at 501(d)(7)(A)(1)) in terms of survival of the species *for only 50 years*. In other words, even the highest level of 'recovery' allowed (but no longer required) under the Act could still be a plan for the eventual extinction of the species -- so long as it was estimated to take more than 50 years to accomplish.

**\*\* Section 301(b): Changing the accepted ESA definition of "species" to exclude "distinct population segments."** No longer would the ESA under this new definition of species require protection of geographically distinct population segments. However, the National Academy of Sciences has specifically endorsed the protection of distinct subpopulations as absolutely necessary to preserve a species' biological health.

Under this new definition, *only if a species were in danger of extinction throughout its entire range worldwide would it qualify for protection*. It would thus be OK to wipe out chinook salmon in the lower 48 (along with the entire industry they support) -- there are plenty in Alaska! However, under this definition it would also be OK to wipe them out in Alaska too--there are plenty of chinook still in Siberia! Thus not only salmon but every inland fish species in the United States would eventually be wiped out watershed-by-watershed and stream-by-stream (all of which are distinct population segments) until the last stream and the last specimens of the species remained *somewhere* -- but probably not in the United States.

Under this proposal this nation's aquatic ecosystems would look like Swiss cheese --except that each year the holes would get a little larger.

**The end result would be the wholesale dismantling of this nation's \$11 billion dollar fishing industry and the export of that industry (including the 1.5 million family wage jobs it supports) to other countries where fish and wildlife are better protected**

**\*\* Sections 206 and 505: Creating a nation of zoos - counting hatchery and zoo animals as equivalent; using hatcheries as a substitute for wild fish.** There is an extreme emphasis on zoo breeding and artificial hatchery breeding as the preferred method of conservation. Captive breeding, however, is extremely expensive, and its effectiveness in restoring populations to the wild is questionable. This is why captive breeding programs are widely recognized by scientists (such as in the National Research Council report) to be an emergency last resort and not a substitute for conservation in the wild. Section 505 requires the Secretary to make captive breeding the method of choice. This would gradually turn this

nation's wildlife into zoo specimens

In Section 206, this provision is especially absurd when considering its application to salmon hatchery programs. Section 206 specifically requires that hatchery fish be counted as equivalent to wild fish for purposes of population counts. It allows landowners to totally escape ESA protections by placing more domesticated hatchery fish (however inferior genetically) in streams than the number of wild fish they destroy. It also exempts downstream landowners from any ESA penalty should they later catch or destroy those hatchery fish once they are off the land of the one who introduced them.

*Under this version of the Act, no native fish species (whether anadromous or domestic inland species) would likely ever receive ESA protection again, however close they were pushed to extinction.* The result over time would be that most wild fish populations in this country would eventually go extinct to be replaced with "fish zoo" hatcheries and "museum runs" which would have to be maintained perpetually at enormous taxpayer expense.

The American Fisheries Society estimates that about one-third of all 790 known US fish species are in serious decline and facing extinction. In some states (notably California) as much as 2/3rds of all their native fish species are in danger of extinction. States with 20 or more imperiled fish species include Alabama, Arizona, California, Georgia, Nevada, New Mexico, North Carolina, Oregon, Virginia, Tennessee and Texas. In addition to their purely biological values, many of these fish species are or can potentially become economically valuable.

Under this bill, however, all efforts to restore the nation's declining fisheries would come to a grinding halt -- thus extinguishing the majority of a \$111 billion dollar component of this nation's basic economy. There are more fish species in North America than anywhere else on Earth. Inferior quality domesticated farm and hatchery fish would be a poor substitute for the loss of this nation's entire natural aquatic ecosystem.

- \*\* *Sec. 101: Requires the government to pay landowners not to destroy public resources.* Mandatory compensation of landowners would be required by defining most ESA protection activities on private lands as de facto "takings," even when those actions are intended to destroy public property and public trust resources. Fish and wildlife resources belong to the public as a whole, not to the owners of the land they may be on or swimming through at any particular moment.
- \*\* *Sec. 302: Independent peer review is not truly independent* -- The proposed peer review process should be done by at least 3 reviewers (not merely 2 as in the bill) and the review panel must exclude those persons with a direct or indirect financial interest in the outcome, or who are representing, related to, retained by or employed by any person or entity with a direct or indirect financial interest in the outcome. As currently drafted only agency scientists are excluded -- but not paid industry representatives or paid lobbyists.



**\*\* Sections dealing with notice and publication requirements:** Far from eliminating federal bureaucracy, several sections would greatly increase this burden. In particular are the various requirements for meetings held in every affected county. For any species that ranges widely or is found in many states -- such as the bald eagle -- **this means thousands of individual public hearings would have to be held, and would cost millions more dollars -- all at taxpayer expense. And this is just the listing process before any recovery costs have been incurred.**

#### PROBLEMS WITH THE ESA AND THEIR SOLUTIONS

The Endangered Species Act is not a perfect law. As a regulated industry, we know firsthand some of the problems that the current act has created, and are seeking to make the act work better and more efficiently. However, what should not be in question is the need for the act itself. The problems with the act are not that it is too strong, but that it is too bureaucratic and too poorly funded to accomplish its purposes efficiently with the least amount of economic pain.

As a regulated industry organization which also strongly believes in the importance of the goals of the act, we believe the ESA needs improvement in a number of ways, including the following:

**(1) *The ESA should promote species recovery, not mere maintenance on indefinite life support*** -- The principal flaw of the ESA is that it establishes a goal far short of actual recovery of species. The stated goal of the ESA is to prevent extinction and to establish plans for the "conservation and survival" of listed species. This minimal level of conservation does not result, in many cases, in ultimate population recovery. Under the current conservation standards, more and more species are thus pushed toward, and indefinitely maintained just short of the line of extinction. Massive last ditch rescue efforts begun when a species is already hovering over the abyss of extinction is a *much more expensive proposition* than to keep the species well-distributed in self-reproducing populations in the first place, from which the species will perpetuate itself naturally and at no cost to humans. Prevention is always cheaper than cure.

H R 2275 barely touches on proactive prevention of declines. While there is language allowing Habitat Conservation Plans for more than one species, this is still a species by species approach. Protection of entire ecosystems would prevent hundreds of species dependent upon those ecosystems from declining toward extinction.

**(2) *There should be recovery plan deadlines*** -- Recovery plans do not exist for most listed species, even years later. Recovery plans should be mandatory and be required to be published within 18 months. Regulatory uncertainty is in many instances the cause of more economic dislocation than the conservation measures themselves would be once implemented. At present there are no deadlines on adoption of recovery plans, thus perpetuating that uncertainty. For an industry such as ours or the timber industry, this uncertainty makes it very difficult to develop long range business plans or to

obtain financing. The law should therefore require the Secretary to prepare within 18 months of listing a final recovery plan that incorporates the Recovery Target document and all implementation plans, and which also contains enforceable deadlines for all action items.

The law should also require the Secretary to ensure to the maximum extent practicable that the combined set of implementation plans will, when implemented, achieve recovery of the species within a reasonable time frame. The recovery plan should identify and prioritize actions that would have the greatest potential for achieving recovery of listed species.

Even though H R. 2275 abandons "recovery" as the goal of the Act, it does contain "conservation plan" deadlines which are reasonable time frames. We consider this a major step in the right direction. Section 502 of H R. 2275 also prioritizes the preparation of "conservation plans" to emphasize multi-species plans, areas where natural resource conflicts exist or are likely to exist and species for which no plan yet exists. This Section 502 also emphasizes implementing conservation measures which have the least economic impact first, as well as voluntary cooperation and nonregulatory incentive-based efforts. Again, except for the fact that "conservation" is not "recovery" these are all principles that, as a regulated industry, we strongly support.

*(3) Assuring cost effectiveness and minimizing conflicts with private landowners* -- Most of the conflicts between private landowners and the government with respect to species protection are more perceived than real. Nevertheless, there is a need to minimize those conflicts to the extent possible as well as providing for conservation measures which achieve the goal as cost effectively as possible. Some of the measures that should be incorporated into the law to achieve these goals include the following:

The law should direct the Secretary to emphasize the role of federal actions and public lands in achieving recovery. The law should be clearer in specifying that federal agencies have a responsibility to use their existing programs to foster the implementation of recovery plans to the degree they can.

If critical habitat occurs on privately held lands, the law should direct the Secretary to identify land for acquisition in the recovery plan (including any land interests less than fee title, such as conservation easements) pursuant to section 5 of the Act, from willing sellers, and should to set priorities for acquisition. This process should be well funded and the administrative procedures for financing these acquisitions should be simplified. Many landowners would be more than willing to help with recovery efforts if such financial incentives were more readily available.

The law should also direct the recovery team and the Secretary, in preparing the list of recovery actions, to consider the cost effectiveness of conservation actions in order to identify ways of reducing costs of recovery without sacrificing species preservation or recovery goals.

Landowners should be encouraged to provide habitat protection through a variety of incentive and financing programs, including the following

- (a) Establish a revolving loan fund for state and local government entities to encourage such entities to develop regional, multi-species Habitat Conservation Plans (HCP's).
- (b) Enable landowners with proposed activities consistent with an approved regional HCP to obtain expedited approvals of those activities.
- (c) Authorize the Secretary to enter into cooperative management agreements with private landowners, providing financial incentives for conservation measures above and beyond those required by the ESA. Activities to be funded under this provision would be those called for by an approved recovery plan.

The Habitat Conservation Plan (HCP) procedure is a good tool for landowners to restore some certainty into the process as well as to provide for long-term protection measures. However, the current HCP process is deeply flawed and includes too little public notice and comment. Furthermore, HCP's can be inconsistent and even work at cross purposes with approved recovery efforts elsewhere. The law should require HCP's to be consistent with approved recovery plans and goals.

To its credit, the drafting team for H.R. 2275 have incorporated most of these concepts in principle, although we may have some problems with detailed implementation procedures and "conservation" standards. We support these approaches but have some problems with the actual language used here.

Both HCP's and recovery plans may have to occasionally be updated and revised in light of new scientific information or the results of plan monitoring. H.R. 2275 does not allow for amendments of an HCP in light of new data -- including data that indicate that the HCP itself is failing. There should be a periodic review process, either automatically every 5 years or when triggered by new data.

During that review process, existing recovery plans should be kept in full force, but the Secretary should propose modifications to the plan to conform with new standards. These proposed modifications should be widely published for public comment and adopted into the recovery plan only when they will promote equal or greater protection and faster recovery in a more cost effective manner.

*(4) Protection should be aimed at endangered ecosystems, not just individual species, so that the need for future listings can be prevented -- A species by species approach does not generally work. Multi-species plans for the protection of endangered ecosystems need to be developed so that those species which are part of such ecosystems do not begin the slide toward extinction to begin with. The ESA needs to become an "endangered ecosystem" act as well. Protection measures should be wholesale, not retail, in order to be cost effective.*

(5) *Funding for scientific surveys and recovery efforts should be greatly improved* -- The total funding for all ESA research and recovery efforts amounts to approximately 50 cents per US citizen per year. Given the level of problems the ESA needs to address, and given the potential economic return on this investment, the current levels of funding for species identification and recovery borders on the ridiculous. 50 cents per year is too little to invest in our biological future.

(6) *Alternative Dispute Resolution for property owners* -- There are rare instances in which property owners were unfairly treated or in which government agencies made inappropriate decisions. This is inevitable in any large administrative process. However, there should be a speedy and effective way to put these problems to rights. Some internal dispute resolution mechanism would be very helpful for landowners to minimize unnecessary conflicts and resolve disputes. There is also an existing Alternative Dispute Resolution process within the U.S. Court of Claims which allows aggrieved landowners to present their case to a Claims Court judge without needing a lawyer and without a lot of paperwork. This process does not even require a trip to Washington, DC -- it can be done by fax and phone. At a minimum, the ESA process ought to include this mechanism as a "safety value" to prevent problems from escalating out of control.

(7) *All known information about the existence and range of threatened or endangered species should be available to prospective purchasers of property from a centralized data source* -- Information depositories should be created (perhaps made available through the National Biological Service and administered through state agencies) so that prospective purchasers of property would be able to ascertain quickly and inexpensively whether or not ESA listed species are known to exist on the property they are considering purchasing. Similar state-based information services are already available in states like California, through the local permit process. In theory, it would be possible to have all this information in readily searchable form with a quick computer inquiry for a very minimal fee.

Most land use conflicts result when landowners have invested substantial money and resources in a development project and feel that they have no choice except to proceed in order to recoup their investment. If a prospective landowner knows before close of escrow whether or not there might be conflicts between development plans and fish and wildlife protection obligations, he or she could plan accordingly, propose mitigation measures with acceptance a condition of close of escrow, and in general take a number of proactive steps to minimize or eliminate any potential future conflicts. Biological impact review of development plans by state fish and wildlife or local agencies is routinely done in many states as part of the permit process, and this additional data base would fit neatly into that process.

Thank you for this opportunity to testify. I ask you to remember that fishing is this nation's oldest industry as well as one of its most important recreations. Protecting fish means protecting jobs, protecting food production, protecting commerce and protecting recreational opportunities. *Without a fully funded and operational ESA, it would be commercial and sport fishermen who will find themselves endangered.* Where the fish go, so go the billions of dollars they produce and the jobs and communities they support.

Stuart L. Pimm

Professor of Ecology

Department of Ecology and Evolutionary Biology

The University of Tennessee

Knoxville, TN 37996

Testimony to the U.S. House of Representatives' Committee on Resources

Wednesday , September 20th 1995

I speak as a scientist who studies global patterns of biological diversity and extinction. My remarks are not the official opinion of any scientific body. Nonetheless, I'm confident that the majority of my colleagues will conclude that HR2275 is not scientifically sound, nor can it be considered a credible attempt to address the scientific problems of managing biological diversity and preventing extinction.

It's unfortunate that none of the current scientific consensus on endangered species management has found its way into this bill. In May this year, The National Research Council of the National Academy of Sciences issued a report entitled *Science and the Endangered Species Act* in response to a congressional request. The Ecological Society of America published its deliberations at about the same time. And on August 31st, a distinguished team of scientists, headed by Professor Tom Eisner of Cornell and including Professors Ed Wilson (of Harvard) and Jane Lubchenco (president-elect of the American Association for the Advancement of Science), published their thoughtful views on the matter in the prestigious journal *Science*.

Not one of their recommendations has been included in this bill, so it will not surprise you that I cannot present a list of the bill's scientific problems within my allotted time. Among my major concerns are these:

1. The bill requires scientists to assess the "biological significance" of a species. Without further guidance, this is surely impossible. Were I to guess the bill's intent, I would include the criteria of the "key-stone" roles that species play in ecosystems, the early warning of systemic environmental decay, and the "umbrella" protection one protected species affords many (sometimes hundreds) of other species in its habitat. These are among the scientific justifications that complement the ethical concerns of millions of Americans for the fate of wolves, bald eagles, and grizzly bears in the lower 48 states. Completely inconsistently, this bill eliminates the protection for all such populations unless Congress decrees otherwise.
2. The bill's denigration of computer modelling is extraordinary. Models provide insights regarding the fate of populations that would take decades to obtain empirically. Such predictions of the future are such an integral part of modern society. It's hard to imagine how we could manage without models of the nation's economy, the spread of HIV, and, of course, weather forecasts.
3. The bill's system of biological diversity reserves does not target areas of maximum diversity, nor does it provide for new reserves. Indeed, only a small portion of existing federal lands appear eligible for inclusion. Many wilderness areas that are eligible were established for reasons having nothing to do with biological diversity. The boundaries of some National Parks — such as Hawai'i Volcanoes — were drawn to exclude almost completely those areas where rare species are concentrated. Moreover,

federal lands are disproportionately located in the western states; in the east, we would be disenfranchised.

- 4 The bill contradicts the conclusions of a National Academy report on the decline of sea turtles. Scientific evidence shows the need for certain regulations affecting the gear used by the shrimp fishery to reduce the severe problem of drowning of endangered sea turtles. Yet, section 201(a) of the bill eliminates the authority for those requirements.
- 5 The National Academy has yet to issue its report on the salmon in the Pacific Northwest. The scientific evidence, however, suggests that fish hatcheries have exacerbated the decline of wild salmon. In contrast to the evidence, this bill argues that hatcheries benefit declining salmon populations.
6. As a member of several editorial boards and a reviewing editor for *Science*, I find the bill's ideas on peer review nearer a caricature than the real thing. It appears to demand unavailable information — such as the names of peer reviewers of published articles. It restricts the ability of the Secretary to evaluate and rank by order of importance the information he receives. In contrast, it presupposes that only peer-reviewed data are admissible. Scientists, by the very nature of our training, are capable of sorting wheat from chaff. Without credible, long-term (but not peer-reviewed) data, the National Research Council could not have made its recommendations about the management of the Hawaiian 'alala. Implementing those recommendations has led to one of the most dramatic stories of how the 1973 Act has saved species from the brink of extinction.

Scientific experience suggests that the same standards should apply to all petitions, whether they are filed to list or delist a species.

7. The bill's reliance on captive propagation is totally misplaced. Captive propagation is no substitute for restoring a species to the wild. The medical equivalent is to rely on heart bypass surgery to address our nation's high incidence of heart disease. I know from considerable practical experience, that restoration is an extremely expensive, last-ditch effort that fails roughly 90% of the time, and it rarely addresses the underlying problems. Our zoos and botanic gardens have the capacity to propagate only a tiny fraction of the endangered plant and animals. Even Noah could only protect the planet's animals for a few weeks — and he had Divine help.
8. The major cause of extinction is, and will remain, the destruction of habitat. The 1973 Act affirms this. So did the Supreme Court in its decision on the case of *Babbitt versus Sweet Home* — a decision obviously applauded by those of us who wrote the Brief of Amici Curiae Scientists. This bill's redefinition of "harm" thus removes the most significant cause of extinction from the scope of the Act's prohibitions.




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**UNITED PAPERWORKERS INTERNATIONAL UNION**


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STATEMENT BY KEITH ROMIG  
 INFORMATION OFFICER  
 SPECIAL PROJECTS DEPARTMENT

WAYNE E. GLENN  
 President

UNITED PAPERWORKERS INTERNATIONAL UNION  
 BEFORE THE HOUSE RESOURCES COMMITTEE

JAMES H. DUNN  
 Secretary - Treasurer

Washington, D.C.  
 September 20, 1995

On behalf of the 250,000 members of the United Paperworkers International Union, I would like to thank the chairman and members of the committee for convening this hearing on the Endangered Species Conservation and Management Act of 1995 (H.R. 2275). This legislation reauthorizes and makes needed modifications to the Endangered Species Act.

Our union strongly supports the goals of the ESA. But we are extremely concerned about job losses and economic impacts resulting from the Act. In our view, the ESA has failed to consider these issues adequately. The law needs to be adjusted.

Many of our members have spent their lives working in and around America's forests. Their livelihoods depend on a sound strategy for preserving the environment. Our union has long fought to find balanced solutions to protect our environment, to preserve job opportunities for American workers and to protect the economic stability of timber-dependent communities.

We do not believe these goals are in conflict. But we also know there is a stark difference between sound environmental protection and a rigid environmental policy that ignores economic realities.

In all of the current political posturing and media coverage over reauthorization of the ESA, little attention has been paid to the working men and women who will be so dramatically affected by reauthorizing legislation. Protecting species and protecting jobs should not be partisan issues. There simply is too much at stake. That is why we are pleased to see that H.R. 2275 incorporates the Clinton administration's ten principles for ESA reauthorization.

I am here today because pulp and paperworkers throughout the nation have felt the heavy blow of an unbalanced Endangered Species Act. The problem is most dramatically illustrated in the ongoing debate in the Pacific Northwest where communities are still reeling from the impact of efforts to protect the Northern Spotted Owl. ESA restrictions prohibiting timber harvest activities on state and private lands, combined with unfavorable judicial decisions and administration edicts have resulted in closed mills and laid-off workers. Since 1989, some 212 pulp facilities, sawmills, plywood mills and



panel mills have closed in Oregon, Washington, and Northern California.<sup>1</sup> Almost 20,000 men and women who worked in those mills lost their jobs.<sup>2</sup>

Communities in the region have seen their tax bases erode as unemployment rises and social services are overburdened. We know, for example, that communities suffering from a mill closure experience a loss in normal commercial business activity due to the increased unemployment or lower income for displaced workers. We also know there is a loss in the assessed value of the closed mill as a tax base for basic local government services. And, in many communities within the Option Nine area -- regions operating under the administration's federal forest management plan -- loss of timber revenue ranges from 25 to 50 percent of federal timber receipts. In some cases, this timber revenue has made up 35 to 40 percent of the funds required for local governmental services in an individual county.

I have heard from our members that reported cases of depression and alcoholism have increased in communities suffering a mill closure. But budget cuts, brought on by decreasing tax revenues and timber receipts, have reduced the number of publicly funded social service workers to help deal with these problems.

We are hopeful that the salvage provision passed by this body earlier this year will slow the job loss by providing some amount of timber for processing. But we still need a long-term solution to rectify this problem and prevent similar devastation from occurring throughout the nation.

In Alaska, where the timber and pulp and paper industries are operating at the lowest level in years, efforts have been made to further reduce the timber base under the Endangered Species Act to protect two species which have not yet been listed as threatened or endangered, the Alexander Archipelago Wolf and the Queen Charlotte Goshawk. Already, more than 220 men and women, the majority of whom are UPIU members, lost their jobs in Wrangell when the facility closed its doors last year. Additionally, two sawmills operated by Louisiana-Pacific -- one in Ketchikan, the other on Annette Island -- shut down because of a lack of fiber and chip supply. Unless Congress makes the necessary changes to the ESA to achieve a balanced approach toward species protection, we will see further job loss in the small communities of Southeast Alaska.

Indeed, most of the communities hit hardest by the effects of the current ESA are small, rural towns. A loss of several hundred jobs, or even a few dozen, in these communities can be a disaster to the local economy. When a mill closes, the whole town suffers. Local businesses shut down. Social services are strained under increasing demands

<sup>1</sup> "Forest Products Industry Report on Mill Closures, Operations and Other Related Information, March/April 1995," Paul F. Ehinger & Associates and Robert Flynn & Associates, pg. 2-1.

<sup>2</sup> *Ibid.*

coupled with a shrinking tax base. In many of the Northwest communities, we've seen increases in reported cases of depression, alcoholism and even suicide.

Too often and for too long we have seen the livelihoods of men and women run headlong into inflexible legislation or unbalanced federal resource policy. We need to make changes to the ESA that avoid these mistakes and take the human element into consideration.

The UPIU supports the principles contained in H.R.2275 as a reasonable approach to making the necessary adjustments to the ESA. In our view, the bill provides sound environmental protection while allowing for the consideration of the economic and social effects of species protection early in the listing process. It takes a proactive approach to species protection to increase populations and prevent species from being listed. This legislation provides strong incentives to protect species and provides for better management of public and private lands. H.R.2275 also requires better, peer reviewed scientific standards for listing petitions and streamlines the consultation process.

We call on this committee and the full Congress to move quickly to pass legislation incorporating the basic principles contained in H.R. 2275. It's time to protect working people and communities along with wildlife.

Thank you.



**AMERICAN FARM BUREAU FEDERATION®**

225 TOUHY AVENUE • PARK RIDGE • ILLINOIS • 60068 • (312) 399-5700 • FAX (312) 399-5896  
600 MARYLAND AVENUE S W • SUITE 800 • WASHINGTON, D.C. • 20024  
(202) 484-3600 • FAX (202) 484-3604

**STATEMENT OF  
THE AMERICAN FARM BUREAU FEDERATION  
TO THE  
HOUSE RESOURCES COMMITTEE  
ON  
H.R. 2275  
THE ENDANGERED SPECIES CONSERVATION AND MANAGEMENT ACT**

**Presented by:**

**Carl Loop  
Vice President, American Farm Bureau Federation  
President, Florida Farm Bureau**

**September 20, 1995**

**STATEMENT BY  
THE AMERICAN FARM BUREAU FEDERATION  
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**Presented by:**

**Carl Loop  
Vice President, American Farm Bureau Federation  
President, Florida Farm Bureau**

**September 20, 1995**

Good morning. I am Carl Loop, President of the Florida Farm Bureau Federation and Vice President of the American Farm Bureau Federation, the nation's largest general farm organization. American Farm Bureau Federation has affiliate state members in all 50 states and Puerto Rico, representing the interests of more than 4.4 million member families.

The reauthorization of the Endangered Species Act (ESA) is one of the most important issues facing farmers and ranchers this year. Farmers and ranchers have for a long time borne the brunt of species protection imposed by federal agencies. This Committee's Endangered Species Task Force learned first hand how the current Act is impacting rural America, as producer after producer described how the Act is adversely affecting them. I appreciate the opportunity to represent those people and all Farm Bureau members before the full Committee today.

It is time for a change. It is time to bring some common sense into how we balance species preservation with making productive use of our property and our resources. H.R. 2275 is a good start toward achieving that goal.

This bill contains most of the principles that Farm Bureau believes are essential to a balanced and effective species protection program.

The cornerstone for any balanced approach for species protection is the recognition and respect for the rights of property owners to use their private property in a productive manner. The current scheme of ESA regulation that dictates private land uses forces property owners to bear virtually the entire cost of feeding and sheltering listed species found on their property. Such a scheme is not only patently unfair, but is contrary to the Just Compensation Clause of the Fifth Amendment to the Constitution. Farmers and ranchers support the concept of endangered species protection, but do not believe they should be forced to bear a heavily disproportionate share of the costs of the program. Since protection of endangered species is a program of public interest, the costs should be borne by the public as a whole.

H.R. 2275 recognizes and incorporates this fundamental concept. It is stated as a purpose of the Act, and is reiterated in various provisions throughout the bill. We heartily support the direction of the bill to respect private property rights and to balance the interests of species and the needs of people. Both will benefit from this approach.

### **1. The Bill Provides Compensation For Use Or Diminishment Of Private Property.**

A major aspect of this balanced approach to species protection is section 101 which provides a comprehensive mechanism for compensating private landowners for lost use or value in their property resulting from actions to protect endangered and threatened species. This section is an explicit recognition of the mandates of the Fifth Amendment that the costs of species protection should properly be borne by society as a whole. The procedures for claiming compensation set forth in the bill are fair, flexible and straightforward. The landowner properly has the burden of raising the possibility of a claim for compensation. The bill provides that the value of compensation is a matter of negotiation between the landowner and the government.

At the same time, it should be noted that this provision does not limit in any way the scope of actions that can be taken to protect listed species. The agencies would be free to take appropriate actions for the protection of listed species, but the bill would require that agencies taking actions that diminish the value of private property must compensate the landowner for the loss in value. This requirement will result in finding more creative and effective ways to protect listed species on private property, and it will help to bring landowners in as necessary partners in protecting species found on their land.

AFBF strongly supports the approach taken in section 101 to provide a procedure for compensating property owners when the government deems their land is required for protection of listed species. It is a necessary element that must be included in any ESA reauthorization bill that Farm Bureau will support. H.R. 2275 is the only bill to include this vital provision.

We have two concerns with the section.

First, the 20 percent floor before the need for compensation is triggered is a concern to us. As written, this section in effect requires farmers and ranchers to donate up to 20 percent of their property to the government for species protection. On top of already exorbitant taxes and other regulatory burdens, this added "regulatory tax" is too much for our members to bear. It also still represents a disproportionate share of the costs of endangered species protection, even though it is a marked improvement over the current ESA implementation. The Fifth Amendment has no floor for when compensation is required for a taking of private property. The ESA should not have such a floor either.

Secondly, the restriction that payments under the bill are limited by annual agency appropriations may result in landowners who are entitled to compensation under the section not

being able to actually receive their compensation until much later, if at all. The liable agency should not be in control of the funds to be paid out, and landowners should have assurances that any compensation awarded hereunder will be paid promptly in full.

## **2. The Bill Protects Private Persons From Being Prosecuted For Using Their Property In A Way That Might Modify Species Habitat.**

The recognition and respect for private property rights is also evident in section 202, which removes modification of habitat from the list of prohibited activities that could give rise to civil or criminal penalties under the Endangered Species Act. This section accomplishes this by re-defining "harm" to a species to mean "direct action against" the species.

Adoption of this simple amendment will go a long way toward removing most of the problems and concerns that private landowners have with the way that the Act is implemented. The current prohibition against habitat modification, narrowly drawn but broadly applied, represents the ultimate control over private land use by the federal government.

In addition, adoption of this amendment will not or should not compromise any of the purposes of the original Act. The purpose of section 9 was to prevent harm to species, not to control land use. Current application of the "harm" definition has all but removed any inclination of the government to designate critical habitat or to provide incentives for protection of species. Imposition of blanket prohibitions against habitat modification also provides a disincentive to adopt an active management program that might benefit the species. The current application of section 9 fosters a program of command and control regulation and not of incentives.

We believe this amendment will benefit both the species and private landowners.

Removing the prohibition against use of private property will also have an effect on other sections of the bill. For example, section 203 dealing with private consultations under the Act (similar to federal consultations under section 7) will largely be obviated by the removal of the prohibition against modification of property as an actionable offense.

## **3. The Bill Contains A Number Of Other Important Provisions That Protect Private Property Without Compromising Species Protection.**

The two provisions discussed above are perhaps the most often mentioned examples of private property protection in the bill. There are, however, other provisions that relate to property that Farm Bureau strongly supports.

Section 105 preserves the right of the states to allocate water within their boundaries. It also provides that the ESA does not allow any federal agency or agent to impose conditions on or impair the right to use water so allocated under state law, or create a limitation on the exercise of

existing water rights.

The need for this provision is evident in the fact that control of water is becoming the focal point of conflicts under the Act. As particular runs of fish in individual rivers are becoming recognized as separate "species" and thus endangered, the potential looms that listing all of these species will wrest control of water from the states to federal ESA regulators. Section 105 resolves this issue by retaining authority with the states.

This section is particularly important for western states, where water is a scarce commodity. However, it is also important for eastern states to retain full control over the use of their water within the state, as regulation of water resources becomes more prevalent throughout the country.

Section 206, also dealing with aquatic habitats, provides a degree of protection to private landowners. Aquatic habitat presents special problems for private landowners, because impacts from activities can be carried many miles downstream. In addition, water condition is an accumulation of many individual activities within a watershed, as well as impacts from natural causes (nitrogen from rainwater or organic matter and acid rain are a few of these impacts).

The bill provides that no restrictions or limitations can be placed on private activities within an aquatic habitat area unless those activities can be determined to be causing adverse impacts. This protects a landowner from being regulated for impacts that are caused by others.

#### **4. The Bill Provides Some Incentives To Landowners To Voluntarily Protect Listed Species And Habitat On Private Property.**

Section 102 of the bill requires the federal government to cooperate to "the maximum extent practicable" with states and private landowners in the protection of listed species. The bill authorizes the Secretary to enter into Cooperative Management Agreements (CMA) with private landowners for the management of species. These agreements would be voluntary with the landowners, and would not obligate them to restrict activity on their property without their written consent. The CMA would provide a "safe harbor" against any further restrictions being imposed due to additional listing of species on the property, and lawful activities that comply with the terms of an agreement are exempt from section 7 consultation and section 9 taking provisions. The bill augments these agreements through a series of habitat conservation grants and technical assistance grants.

This bill provides a necessary element that is sorely missing from the current Act -- incentives to private landowners and other non-federal entities to manage species found on their property. Such incentives are particularly important in light of the fact that over 78 percent of all listed species occupy private property, and for 34 percent of all listed species private property is their exclusive habitat. Thus, cooperation of private landowners is not only important but necessary for the Act to work. Experience has shown that people are more likely to respond to

incentives than to command and control regulation. Farmers, ranchers and other property owners are no exceptions. The American Farm Bureau Federation has been a strong proponent of providing incentives to private landowners to assist in the management and protection of listed species.

The Cooperative Management Plan provides a good start toward changing the direction of species protection from command and control to a partnership with willing landowners. It provides landowners with a degree of certainty that they will not be subject to consultation under section 7 or liability under section 9 for actions taken in accordance with the CMA. It also might serve as a substitute for the Habitat Conservation Planning procedure that is now too costly and time consuming for farmers and ranchers to use. If it can serve as a "poor man's HCP," the Cooperative Management Plan will serve an important function.

But this section only provides one type of incentive. We submit that the bill should take the next step and provide a wider array of incentives to encourage as many landowners as possible to assist in managing species found on their property. We are convinced that the success of species protection depends on landowner cooperation.

Farm Bureau has proposed a Critical Habitat Reserve Program as a means of providing such incentives. While this program is not currently incorporated in H.R. 2275, we will address this issue in more detail later in our statement.

#### **5. The Bill Provides A Balanced Approach To Allow Redress Of Violations Of the Act.**

The bill makes a number of important amendments that would allow all affected parties to challenge actions taken pursuant to the Endangered Species Act, while at the same time protecting private parties from judicial harassment by other private interests. Farm Bureau strongly endorses all of these changes.

First, the bill would expressly recognize the right of farmers, ranchers and others who are, or might be, adversely impacted by a listing of a species or other agency action to protect their property or economic interests by challenging the action in court. This provision becomes extremely important because the federal Ninth Circuit Court of Appeals, the nation's largest federal judicial circuit in terms of area, has recently held that people cannot sue to protect their economic or property interests from arbitrary or capricious government actions under the ESA. This was succinctly stated in the recent case of *Bennett v. Plenart*, No. 94-35008, (9th Cir. Aug. 24, 1995):

"This case requires us to determine whether plaintiffs who assert no interest in preserving endangered species may sue the government for violating the procedures established in the



Endangered Species Act. We conclude that they may not.”

By removing the capability of landowners and others adversely impacted by ESA decisions to challenge those decisions, the Ninth Circuit has left people at the mercy of federal agencies to do whatever they want in the name of species protection. While those adversely impacted by ESA decisions are shut out of court by the ruling, those interests favoring increased species protection are free to advance their interests. The bill levels the playing field by giving both sides the opportunity to protect their interests.

The bill also expressly recognizes the rights of people adversely impacted by species decisions to participate in cases brought against federal agencies. The real parties of interest in such cases, farmers and ranchers, are often not named as parties in the case, and the defendant government often settles such suits in a manner that is adverse to the private interests that are harmed. This provision allows such private parties to protect their rights by participating in these cases.

The citizen suit provision of the ESA has also been used as a means to effect land use control of private property through the courts by third party private interest groups. Such groups use the courts to sue private landowners to complain of private activity on private lands that they claim violates the Act, thus sidestepping and evading enforcement by responsible federal agencies by seeking backdoor enforcement from the courts. Landowners are often forced to spend substantial amounts of time and money fighting such suits. The bill corrects this problem by providing that citizen suits may only be brought against the United States or its agencies for ESA violations. Any violations by private parties will be redressed by the federal agency authorities charged by Congress with enforcing the Act.

The bill returns a fairness in the enforcement of the Act and accountability of the federal government that had been taken away by some courts. Farm Bureau supports these amendments.

#### **6. The Bill Simplifies Procedures and Provides More Certainty For Private Activities.**

Another aspect of the bill that we support are those provisions that give private citizens some degree of certainty that activities they might undertake will not run afoul of the Act. This is especially true for those landowners who enter into Cooperative Management Agreements or Habitat Conservation Plans. Another section of the bill provides for a system of nationwide “general permits” that allow activities that have minimal or low impacts on listed species to take place without consultation under section 7 or the threat of prosecution under section 9. The permit provision is patterned after a similar provision in the Clean Water Act that has been successful in reducing bureaucratic red tape.

We believe that these procedures will have similar successes with regard to endangered

species that they have enjoyed with regard to clean water. Too much time and money is spent by agency personnel in informal or formal consultation or in investigating activities that have minimal or no effect on listed species. Such agency time and money is especially wasted in cases where activities are part of an approved Cooperative Management Plan or Habitat Conservation Plan.

The same is true for the person engaging in the activity. Farmers and ranchers often spend significant time and money to gain approval for activities that might be covered under a general permit, or that might be already approved under a CMP or a HCP. But the biggest advantage for farmers and ranchers and other private parties is the certainty that they gain that such activities will not violate the Act.

#### **7. The Bill Would Allow Private Parties In Interest To Participate In Consultation.**

Section 7 requires consultation between the Fish & Wildlife Service and any federal agency for any action authorized, funded or carried out by that agency. In many cases, the involvement of the federal agency is minimal, such as providing funding or funding guarantees, or issuing permits under various programs. In all of these types of cases, the only party that is really affected is the non-federal party who is receiving the funding or the permit. Yet in most cases, these private parties have no voice in the consultation process.

The bill provides that the non-federal party shall be entitled to participate in the consultation process along with the federal agency. This will provide a number of benefits. The most obvious benefit is that it will give private parties an opportunity to provide input in the consultation process that is deciding the fate of their projects. Secondly, it facilitates the consultation process by having the private parties available to answer questions about the project that might arise. Finally, private party participation provides an opportunity to develop workable "reasonable and prudent" alternatives in those cases where the original project might jeopardize the existence of a species.

We support this provision as a means of improving the consultation process.

#### **8. The Bill Provides For Peer Review Of ESA Decisions.**

While the Act contemplates that decisions involving the listing, de-listing, or likely jeopardy to species are to be made on the basis of sound science, in practice that is not always true. The current Act does not contain any safeguards to ensure that decisions are scientifically based, and this often leads to decisions that adversely impact landowners while serving no benefit to the species. Thus, one of the major priorities of the American Farm Bureau Federation in the reauthorization of the Act is to ensure that adequate safeguards against sloppy science are built into the Act to provide some accountability from agencies.

Section 302 of the bill provides for scientific peer review of most endangered species

decisions before they become final. Peer review is one such safeguard against sloppy science that ensures that scientific evidence is sufficient to stand up to scrutiny by scientific colleagues.

In order to be truly effective, peer review must present an unbiased review by qualified experts selected in a random or impartial manner. Section 302 of the bill largely accomplishes this objective. In addition, an effective review panel will not only look at adequacy of scientific evidence, but it will also review the scientific methodology upon which conclusions are based. The bill requires this review as part of the peer review process.

The bill provides impartiality of experts by disqualifying government contractors and those who have participated in the listing decision. Whether or not such people might actually be biased, this section removes any appearance of possible bias, without sacrificing any expertise.

We have two suggestions for improvement of this section. First, peer review should be extended to review proposed listings to determine whether there is even adequate scientific evidence to warrant proposing a species for listing. Review at this early stage could save the agency significant time and money by stopping listing proposals that have little or no scientific support. This early review would also prevent the use of the proposal stage to obtain a *de facto* listing during the period the listing is open.

Secondly, the peer review panels should be exempt from the provisions of the Federal Advisory Committee Act (FACA). Such panels have been used in the past (Alabama sturgeon, northern spotted owl, 5 Idaho snails, to name but a few) and courts have held such panels come within the provisions of FACA. To avoid burdensome compliance procedures these panels need to be exempt from FACA in order to be of any impact.

#### **9. The Bill Recognizes And Reaffirms The Importance Of An Agency's Primary Mission.**

Original Congressional language stating that the protection of species is to be accorded "the highest of priorities," together with Court decisions that have reiterated that statement (e.g., *Tennessee Valley Authority v. Hill*), have elevated the status of the Endangered Species Act and its requirements above all other laws, including the authorizing statutes of federal agencies. Thus, these agencies are hamstrung in the performance of their primary missions by having to comply with the Endangered Species Act, and their work at their primary mission can be, and has been, superseded by a species listing. For example, livestock permittees on national forests in Oregon and Idaho were shocked to find that their grazing activities as well as all other multiple uses on the national forests had been stopped because a court found that the Forest Service had not consulted with the appropriate federal agency with regard to certain listed species.

The net effect is that FWS and/or the National Marine Fisheries Service (NMFS) has as much or even more control over federal activities than the responsible agency. That is because these agencies can change or stop the activities of responsible agencies in the name of species

protection.

Section 401 of the bill corrects this flaw to some extent. It does not re-establish the primacy of the agency mission, but it also does not continue the primacy of the Endangered Species Act. Where the agency mission and the ESA can co-exist, the bill tells them to co-exist. Where there is an irreconcilable conflict, however, the bill authorizes the President (head of the Executive Branch) to resolve the conflict in the best interest of the public.

We believe this is a good approach. It neither compromises the mission of federal agencies (as was done in the current law) nor protection of species. Both are equally important according to the bill. Rather it leaves any final decision to the President, an elected official who is the ultimate head of the federal bureaucracy.

#### **10. The Bill Distinguishes Between Endangered And Threatened Species.**

While the Endangered Species Act obviously contemplates a difference between species listed as "endangered" and those listed as "threatened," in actual practice there is very little if any difference between these categories as to the impacts of the listing on private activities. That is because the "taking" prohibitions of section 9 which apply only to endangered species are routinely applied equally to threatened species as well.

Section 507 of the bill recognizes the distinction between categories and attempts to make the difference one of more than name only. It provides that any rule listing a species as "threatened" must also promulgate rules for the conservation of the species, including what activities constitute a "taking" of such species. The bill also provides that any such restriction applied in the case of threatened species cannot be as restrictive as prohibitions applied to endangered species.

Farm Bureau supports this amendment.

#### **11. The Bill Provides A Framework For Petitions To De-List Species.**

Section 307 of the bill provides a mechanism and framework for Petitions to De-List Species. While the current law mentions petitions to de-list, it is only in passing to say that the procedures are the same as for petitions to list. As a result, few people are aware of the process for seeking to de-list species.

The process and practice for de-listing species has been largely undefined, with the result that bureaucrats have acted as they please. When species have attained or exceeded recovery goals as stated in recovery plans, the agency revises the recovery goals upward. The Northern Continental Divide and Yellowstone populations of grizzly bears are prime examples of species that should have been de-listed years ago because they satisfied recovery goals.

Modern scientific advances in DNA testing and other techniques have also called into question assumptions regarding listed species that were not known at the time they were listed. This may result in the de-listing of certain species because they should not have been listed in the first place.

A process for de-listing species is therefore a timely addition to the Act. The criteria set forth in section 307 for de-listing species appears to cover all relevant situations where de-listing would be appropriate. Our only suggestion for this section would be to enumerate some situations where the original listing might have been in error (more numbers and habitats than previously known, revised taxonomic criteria, etc.). We would also add another criterion to the effect that de-listing is appropriate for species that have been hybridized to the point where they are no longer the same species that was listed.

## **12. The Revisions To The Listing Process Can Be Further Improved.**

Title III amending the listing process represents a substantial improvement over current law. However, of all of the parts of the bill, it is in our view the one that could stand improvement the most.

Farm Bureau has identified several principles that must be incorporated into the listing process in order for it to be adequate. Some of those principles include:

- Decisions under the Act must be based on sound, verifiable scientific evidence endorsed by peer review.
- Social and economic factors must be considered.
- The listing of subspecies and distinct populations should be limited to only those situations where such listing is necessary for the survival of the species as a whole.

With the exception of peer review, these principles are not incorporated in H.R. 2275.

### **A. The bill retains the current scientific "standard."**

An important aspect for farmers and ranchers in the reauthorization of the Act is to ensure that decisions are made on the basis of sound science. This entails a minimum threshold of scientific evidence that the government must meet in order for a species to be listed. As it now stands, the burden of proof is on private entities to prove that proposed species should not be listed. Yet the Act specifies that the government must make a scientific determination that the species should be listed. It is that determination which places the burden on the government, and that burden must be supported by sound science.

The current scientific standard for decisions is "the best scientific and commercial data available." Such a "standard" is really no standard, because it would permit listing on the basis of a single master's thesis, if that is the only, or "best" data available.

While the bill seeks to protect against abuses of science in the decision-making process by such mechanisms as peer review panels, it does not change the current "standard." That will only perpetuate the problem of decisions being made on less than a verifiable scientific basis.

The government has the initial burden of proof in ESA cases because it must make a determination in all cases, whether it be for listing, critical habitat, or jeopardy. The Act needs to set a minimum scientific standard that must be met for decisions to be scientifically valid. It must contain a requirement that determinations must be made on the basis of sound, credible, verifiable scientific data necessary to support a decision. Without such a provision, there is always the possibility of scientific insufficiency.

**B. The bill's provision relating to identifying missing data and requiring it to be provided is inadequate and represents an unacceptable approach.**

The bill requires that all data necessary for listing be identified, and if not provided at the time of listing, it must be subsequently provided and subject to notice and public comment. However, the bill allows the species to be listed in the interim.

This is not a good approach. It not only eviscerates any principle that listings be made on the basis of sound science, but it allows listings on admittedly insufficient science without public notice and comment. The bill makes no provision for consequences if promised data is not provided on time. Yet the species remains listed. Without any sanctions for not meeting deadlines, the section is virtually meaningless, and actually worsens the listing process.

We suggest that this provision be deleted.

**C. The bill makes no provision for consideration of economic or social considerations in ESA decisions.**

A principal Farm Bureau tenet for ESA reauthorization is that social and economic consideration must be given in ESA decisions. The bill does not accomplish this. We would like to suggest a proposal that will accomplish this while at the same time keeping the listing process purely scientific.

Since it is not the *listing* of species per se that causes social and economic consequences, but rather the *management* of species, we suggest that listing proposals should be accompanied by a separate draft management plan for each species. The draft management plan would be separately noticed in the *Federal Register*, but the comment period would track the listing

proposal. The listing proposal would be based on sound science only, while the management plan would consider social and economic factors. In this way all relevant factors would be considered in their appropriate places. A final management plan would be published at the time of any final listing of the species.

The species would benefit from this procedure as well, because it would have a management plan in place at the time of listing.

The management plan, critical habitat designation (which we submit should be mandatory and not merely discretionary as in the bill) and the recovery plan would comprise a species conservation plan. This conservation plan would thus have all the relevant and necessary elements for species management and recovery.

We urge the committee to adopt such an approach that will benefit landowner and species alike. We would be willing to work with the committee on such a proposal.

#### **D. The listing of subspecies and distinct populations needs to be limited.**

Listings should be made on the basis of species alone. Subspecies should only be listed if listing is necessary to save the species as a whole. All too often, taxonomists can make subspecific distinctions where in reality there is little or no difference between two populations. In other cases, they ignore recognized subspecies distinctions in order to base decisions on a species level (e.g., introduction of Canadian wolves in the west). In order to avoid confusion and the possibility of scientific manipulation, the Act must clearly prohibit subspecific listings unless listing is required to save the species.

Listings of distinct populations invite even more abuse. Species numbers and trends might be plentiful in many parts of its range, but nevertheless the species could be listed in a specific area because it either once occupied the area and no longer does, or the area is the outer fringe of the species' range. Such listings have no basis in fact or in science.

The bill seeks to limit such listings to "distinct populations of national significance." That is a step in the right direction, but does not go far enough.

#### **13. Incentives Provided in The Bill Are Not Adequate.**

AFBF has long advocated a system of landowner incentives as a necessary part of changing the direction of the Act from a negative-based regulation to a positive-based incentive. People will be more willing to recognize and accept species on their land if they are given positive incentives to protect and manage such species, rather than being faced with criminal or civil penalties for doing something wrong.

H.R. 2284 attempts to provide some positive incentives along the lines of our Critical Habitat Reserve Program that Farm Bureau has proposed. We would like to address a few comments on the approach taken in that bill, even though it is not specifically before the committee.

We like the mechanics of the proposed program in terms of participation, incentives, duration, etc. We have a few concerns with some other aspects of the proposal.

First, the program should be under the Department of Interior, and not the Department of Agriculture. Interior has jurisdiction over endangered species, and overlapping jurisdiction as provided in the bill only creates problems and confusion resulting in delays. Since Interior must ultimately approve any actions taken by USDA, the bill merely adds another step to the process.

Second, the program should be limited as to who or what type of habitat will qualify. We have suggested that the program be limited to critical habitat in order to cover only the habitat that is necessary for the species. The bill makes no such limitations, and would even apply to candidate species habitat. Since the program will not have unlimited funding, it is very important that it be effective in protecting the most important habitat. That is why we chose critical habitat as a limiting factor.

Third, the bill must address the question of what happens at the end of a contract period. The bill should specifically allow the landowner to terminate a contract at the end of the period, and to use his property for other purposes without fear of civil or criminal penalties..

### CONCLUSION

H.R. 2275 contains many of the principles that Farm Bureau believes should be part of ESA reauthorization. The sponsors and the committee have worked hard to craft a bill that will work for all, and we commend you for your efforts. It is a very good starting point for the debate on ESA reauthorization. We have discussed some additional amendments that will make the bill even more fair to landowners and beneficial to species, and we sincerely hope that the committee will take these suggestions into consideration.



STATEMENT OF THE REV. JOHN D. PAARLBERG  
 MINISTER FOR SOCIAL WITNESS AND WORSHIP  
 THE REFORMED CHURCH IN AMERICA

Before the

COMMITTEE ON RESOURCES  
 U.S. HOUSE OF REPRESENTATIVES

Concerning

H. R. 2275  
 THE ENDANGERED SPECIES CONSERVATION AND MANAGEMENT ACT

SEPTEMBER 20, 1995

I want to thank the committee for the opportunity to speak to this issue. I am especially grateful that you have made room for the voice of the religious community. While we do not all share the same theological convictions, I understand my presence here as a recognition by the committee that the issue before you is not merely a matter of politics and economics but that it touches on the very deepest of human values; indeed that it has to do with the very nature of what it means to be human--in biblical terms, what it means for us to be creatures among other creatures and yet creatures created in the image and likeness of God.

I am an ordained minister in the Reformed Church in America, one of the oldest Protestant denominations on this continent, tracing its ministry in this country to 1628. As the minister for social witness and worship for the Reformed Church I work with fellow Christians in both the National Council of Churches of Christ Eco-Justice Working Group and the Evangelical Environmental Network. Each of those groups is a part of the broad interfaith coalition known as the National Religious Partnership for the Environment representing churches and synagogues with membership of over 100 million people.

All our faith traditions recognize and celebrate creation as the gift of a loving Creator. "O Lord, how manifold are your works!" sings the psalmist, "In wisdom you have made them all; the earth is full of your creatures." (Psalm 104:24) For the psalmist, the astonishing variety of life on earth was a cause for wonder, praise, and thanksgiving. Each creature, from the wild goats of the high mountains (v. 18) to the creeping things in the depths of the sea (v. 26), is seen as an indication of the power, wisdom, and continuing care of God. Lutheran theologian Joseph Sittler wrote, "I have never been able to entertain a God-idea which was not integrally related to the fact of chipmunks, squirrels, hippopotamuses, galaxies, and light-years."

Moreover the Biblical tradition affirms that humankind occupies a special place in creation. Of all the creatures only humankind is created in the image of God (Genesis 1:26-27), made a little lower than angels (Psalm 8), and given dominion over the other creatures (Genesis 1:26, 28).

Often these texts have been interpreted in such a way that the rest of creation is viewed simply as "resources" for human use, or worse, they are used as biblical warrant for the abuse and exploitation of creation. Old Testament scholar, Walter Brueggemann, offers a corrective to that interpretation of dominion:

The dominion here mandated is with reference to the animals. The dominance is that of a shepherd who cares for, tends, and feeds the animals. Or, if transferred to the political arena, the image is that of a shepherd king (cf. Ezekiel 24). Thus the task of "dominion" does not have to do with exploitation and abuse. It has to do with securing the well-being of every other creature and bringing the promise of each to full fruition.... Moreover, a Christian understanding of dominion must be discerned in the way of Jesus of Nazareth (cf. Mark 10:43-44). The one who rules is the one who serves. Lordship means servanthood. It is the task of the shepherd not to control, but to lay down his life for the sheep (John 10:11). The human person is ordained over the remainder of creation, but for its profit, well-being, and enhancement. The role of the human person is to see to it that the creation becomes fully the creation willed by God.  
--Walter Brueggemann, *Genesis* (Atlanta: John Knox Press, 1982), pp. 32-33.

An example of humankind's dominion over creation is the biblical writer's assertion that "God took the man and put him in the garden of Eden to till it and to keep it" (Gen. 2: 15). The verse is wonderfully ambiguous. Was the garden made for man or was man made for the garden? The human person needs a place to live, but the garden needs a keeper. The Hebrew word for keep, *shamar*, is the same word used in the Aaronic blessing "The Lord bless you and keep you" (Numbers 6:24). The word *ahvad*, translated here as "till," is more often translated "serve" as in Deuteronomy 11:13: "loving the Lord your God, and serving him with all your heart and with all your soul." The human person is charged to keep the garden the way the Lord keeps us, and to be its servant, guardian and protector.

The Endangered Species Act of 1973, although far from perfect, has been one important way we as a society and as a nation have sought to exercise our God-given responsibility to serve as guardians and protectors of God's creation. The proposed bill seems to me to abdicate that responsibility in several significant ways.

1) The protection and preservation of species' habitat is seriously jeopardized. The fact that under the proposed bill the destruction of habitat essential to a species is no longer considered "harm" to that species makes neither theological nor scientific sense. We cannot separate a species from its habitat. The Psalm from which I quoted earlier (Psalm 104) is as much a celebration of the varieties of habitat in God's creation (mountains, valleys, springs, streams, grassland, forest, oceans) as it is of the creatures who occupy those habitats. The principle cause of species extinction world wide is habitat loss. The report of the National Academy of Sciences ("Science and the ESA") named habitat protection as one of the most critical needs in protecting endangered species.

2) The bill appears to abandon the long-standing recovery goal for all listed species. By choosing a "conservation objective" for each species, the Secretary of the Interior would no longer be required to attempt to recover endangered species. It is inappropriate and

unwise to assume that any one individual or government agency has the authority to decide which of God's unique, unrepeatable creations should be allowed to become extinct.

3) The bill also has several provisions that compensate property owners if they are asked to take or modify actions that will impact endangered species. Care for God's creation is such a fundamental human responsibility that it should not, in most cases, require compensation by the federal government. Moreover these provisions in the bill seem to imply that private property is an absolute right. But the right to own property does not include the right to do anything I choose with my property or to the creatures living there. The right to own property must always be tempered by our responsibility for the common good and our responsibility before God who alone is the absolute owner of all things.

God has woven creation together like a wonderfully beautiful and marvelously intricate fabric. Human activity, and oftentimes human greed, are pulling the threads out of that fabric one by one. As many as 75 to 100 species are becoming extinct each day. If that trend continues it will only be a matter of time before the entire fabric unravels and the eco-system collapses around us. The prophet Isaiah's warning against greed is a warning we would do well to heed in our own time: "Ah, you who join house to house and field to field, until there is room for no one but you, and you are left alone in the land!" (Isaiah 5:8) But if we alone are left in the land then we will not long survive either.

Creation does not belong to us; creation belongs to God. We are not the lords of creation, we are but under-lords. Speaking out of my own Christian conviction, there is only one Lord of creation, and that Lord is Jesus Christ, in whom, through whom, and for whom all things in heaven and on earth were created (Colossians 1: 15-20.)

If the Endangered Species Act needs to be fixed, then by all means fix it; but don't undo it. The proposed bill, if enacted as it is written, would cause serious, and perhaps irreparable, damage to God's creation; it abdicates our responsibility of careful and loving dominion over God's creation; and, from a theological perspective, most serious of all--it assumes a power and an authority for humanity that rightfully belongs to God alone.

I hope and I pray that as you consider this legislation you will consider ways that it might help us as a people, and as a nation, become not the usurpers of God's power, but the instruments of God's tender love and care for all that God has made.

# AVEDA®

AROMALOGY ~ THE ART AND SCIENCE  
OF PURE FLOWER AND PLANT ESSENCES

Heather Weiner  
Defenders of Wildlife  
1101 5<sup>th</sup> Street NW  
Suite 1400  
Washington, DC 20005

Via FAX # (202) 682-1331

September 7, 1995

Dear Ms. Weiner;

Please consider the following concerns regarding the proposed *Endangered Species Conservation and Management Act of 1995*.

The very title of the proposed legislation is misleading. The casual reader without a great deal of knowledge or time may conclude that the proposed bill is a good thing based on the title, and give it little additional thought or attention. How unfortunate that we now live in a time when words are misused to convey the opposite of what they really mean. This tactic will further erode the confidence and trust of citizens. The proposed bill does not conserve endangered species as the title implies, but we would concede that the provisions of the bill do indeed "manage" endangered species — right into extinction.

This proposed legislation is simply another attempt by the radical Wise Use Movement to destroy legitimate governmental involvement in environmental protection and to designate true public interest through a smokescreen of "property rights".

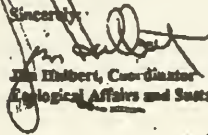
We at Aveda understand the importance of natural systems in the health and well-being of humans, and biodiversity is a key element. Who knows what new drugs or foods are lost as large numbers of animals and plants are allowed and even encouraged to vanish forever from the face of the Earth?

Humans have a moral and ethical responsibility to be good stewards of the Earth and to set aside living space for even the most lowly of creatures. Someday we, and certainly our children and grand children, will regret the short-sightedness and foolishness of the greed and self-serving motivation of a small segment of our population.

Let's stop them before it is too late.

You have our admiration and encouragement to continue your urgent work in speaking for those who cannot speak.

Sincerely,

  
Jim Hubert, Coordinator  
Ecological Affairs and Sustainability

4000 PLEASANT RIDGE DRIVE  
MINNEAPOLIS, MINNESOTA 55449 USA  
012-733-4000 800-283-3224 FAX 612-783-4110

RECYCLED PAPER • PLEASE RECYCLE

CONGRESSIONAL TESTIMONY

CONCERNING THE ENDANGERED SPECIES ACT OF 1973 AS AMENDED  
AND ITS RAMIFICATIONS

PROVIDED TO THE  
RESOURCES COMMITTEE  
HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1995

MAYO A. HADDEN III  
VICE PRESIDENT, MILITARY AFFAIRS  
COLUMBUS CHAMBER OF COMMERCE  
COLUMBUS, GEORGIA

THANK YOU FOR ALLOWING ME TO APPEAR HERE TODAY. I WOULD LIKE TO TELL YOU ABOUT MYSELF, MY COMMUNITY, HOW WE ARE INVOLVED IN A PROJECT INVOLVING THE ENDANGERED SPECIES ACT AND STRUGGLING WITH THE NATIONAL ENVIRONMENTAL POLICY ACT, AND CONCLUDE WITH HOW THE ENDANGERED SPECIES ACT IS SEVERLY IMPACTING ON DEPARTMENT OF DEFENSE. IN 1993, I RETIRED FROM THE US ARMY AFTER SERVING ALMOST 31 YEARS. I SERVED IN THE INFANTRY AND SPECIAL FORCES. THE MAJORITY OF MY EXPERIENCE WAS IN OPERATIONS, PLANS, AND TRAINING. MY LAST FOUR AND A HALF YEARS IN THE ARMY I WAS THE INSPECTOR GENERAL AT FORT BENNING, GEORGIA.

FORT BENNING, LOCATED IN WEST CENTRAL GEORGIA, AND EAST CENTRAL ALABAMA, CONSISTS OF APPROXIMATELY 182,000 ACRES, ABOUT 254 SQUARE MILES. IT IS THE SECOND LARGEST TRAINING AND DOCTRINE COMMAND INSTALLATION. ITS PRIMARY PURPOSE AND MISSION IS TO TRAIN THE INFANTRYMEN FOR OUR ARMY.

TWO YEARS AGO I WENT TO WORK FOR THE COLUMBUS GEORGIA CHAMBER OF COMMERCE. COLUMBUS HAS A POPULATION OF ABOUT 178,000. MY PRIMARY GOAL HAS BEEN TO PERFORM AS THE PROJECT MANAGER FOR A LAND EXCHANGE BETWEEN COLUMBUS, GEORGIA, AND FORT BENNING, A DOD INSTALLATION. IN 1988, THE LEADERSHIP OF THE COMMUNITY AND FORT BENNING, TOGETHER

STUDIED A DILEMMA FACED BY COLUMBUS, WHICH WAS A SHORTAGE OF LAND TO MEET CRITICAL NEEDS. ABOUT 20 PERCENT OF THE COUNTY IS CONTAINED WITHIN THE FORT BENNING MILITARY INSTALLATION. THEY AGREED IN PRINCIPLE TO A LAND EXCHANGE. THE PURPOSES WHICH DROVE THE CONCEPT WERE THE NEED FOR LAND FOR FUTURE ECONOMIC DEVELOPMENT, THE ABILITY TO MEET THE NEEDS OF EXISTING INDUSTRIES AND TO BE ABLE TO RECRUIT OTHER INDUSTRIES IN ORDER TO CREATE JOBS FOR OUR CITIZENS, TO PROVIDE LAND FOR A LANDFILL NEAR THE EXISTING LANDFILL, AND TO PROVIDE LAND FOR A REGIONAL PARK. THE COMMUNITIES LANDFILL WAS EXPECTED TO LAST FOUR TO FIVE YEARS AND IT WAS FELT IT WOULD TAKE 1-2 YEARS TO COMPLETE THE EXCHANGE.

IN THE CONCEPT THEY AGREED THE CITY WAS TO ACQUIRE APPROXIMATELY 3,200 ACRES WITH EQUAL OR BETTER TRAINING VALUE AND GIVE IT TO FORT BENNING, IN EXCHANGE FOR APPROXIMATELY 3,100 ACRES OF LAND ADJACENT TO COLUMBUS (SEE LOCATIONS ON MAP ENCLOSURE 1). THIS LAND IS ADJACENT TO RAIL LINES AND A 4 LANE INTERCITY HIGHWAY SYSTEM. THE 3,100 ACRES REPRESENTS ABOUT 1.6 PERCENT OF THE INSTALLATION. IT IS ADJACENT TO THE CURRENT CITY/ COUNTY LANDFILL, A PRISON, AND A REGIONAL MENTAL HEALTH COMPLEX. THESE REPRESENT CERTAIN TRAINING CONSTRAINTS TO THE ADJACENT PORTION OF THE INSTALLATION. THE 3,200 ACRES THE CITY IS ACQUIRING TO GIVE TO FORT BENNING HAS NO ADJOINING LAND USE IMPACTS OR CONSTRAINTS.

THIS EXCHANGE WAS PRESENTED TO THE CONGRESS, IN 1990. AS PART OF THE DEFENSE APPROPRIATIONS ACT AND IS PART OF PUBLIC LAW 101-510. NOVEMBER 5, 1990. THE CITY OF COLUMBUS AGREED TO PROVIDE THE LAND REQUIRED FOR THE EXCHANGE, TO PAY ANY DIFFERENCE IN FAIR MARKET VALUE, AND TO ACCOMPLISH ALL OTHER ACTIONS REQUIRED BY THE SECRETARY OF THE ARMY. THE PROJECT AND ALL OF THE ACTIONS BEING ACCOMPLISHED ARE BEING WORKED THROUGH FORT BENNING, AND THE ARMY CORPS OF ENGINEERS, ESPECIALLY THE SAVANNAH DISTRICT. IT TOOK COLUMBUS, WORKING WITH THE CORPS OF ENGINEERS, FROM 1990-1992 TO DETERMINE WHAT ACTIONS NEEDED TO BE ACCOMPLISHED, BECAUSE OF THE RAMIFICATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT, THE NUMBER OF FEDERAL AND STATE MANDATED REQUIREMENTS, AND NUMBER OF AGENCIES INVOLVED. AN ENVIRONMENTAL ASSESSMENT WAS TO BE THE BASIS, UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT, TO DETERMINE WHETHER THE EXCHANGE MAKES SENSE FROM AN ENVIRONMENTAL PERSPECTIVE, EVEN THOUGH IT IS APPROVED IN A FEDERAL LAW. IT TOOK COLUMBUS ONE YEAR, 1993, ONCE IT HAD A FAIRLY GOOD IDEA WHAT WAS REQUIRED, TO DRAFT A REQUEST FOR PROPOSAL (RFP) FOR THE REQUIRED ENVIRONMENTAL STUDIES, HAVE THE RESPECTIVE PORTIONS OF THE RFP REVIEWED BY THE APPROPRIATE FEDERAL AND STATE AGENCIES, AND SENT TO PROSPECTIVE ENVIRONMENTAL CONTRACTORS FOR PREPARATION OF A BID. THIS WAS TO PRODUCE THE REQUIRED ENVIRONMENTAL ASSESSMENT. THE CORPS OF ENGINEERS FELT THAT AN ENVIRONMENTAL ASSESSMENT WAS THE



APPROPRIATE LEVEL OF DOCUMENTATION. A FIRM SPECIALIZING IN THE RED-COCKADED WOODPECKER (RCW) WAS ALREADY UNDER CONTRACT TO DEVELOP STUDIES OF THE RCW ON THE TRACT, FOR \$180,000. THE LOW BID FOR THE REMAINDER OF THE EA DOCUMENTATION WAS APPROXIMATELY \$400,000.

IN 1993, THE CITY OF COLUMBUS, BASED ON DISCUSSIONS WITH REPRESENTATIVES OF THE CORPS OF ENGINEERS, APPROVED THE EXPENDITURE OF \$1,000,000 TO COMPLETE THE ENVIRONMENTAL STUDIES, ANALYSES, SURVEYS, AND OTHER WORK TO COMPLETE THE EXCHANGE. THEY ALSO APPROVED \$4,000,000 FOR THE ACQUISITION OF THE PROPERTY ALONG THE SOUTHERN BOUNDARY OF FORT BENNING WHICH IS REQUIRED FOR THE EXCHANGE. THE FORMAL MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE ARMY AND THE CITY OF COLUMBUS REQUIRED THE CITY TO OBTAIN A LEGALLY BINDING PURCHASE AGREEMENT ON THIS PROPERTY WITHIN 90 DAYS OF THE SIGNING OF THE MOA. THE LAND WAS OWNED BY MEAD COATED BOARD CORPORATION. THEY REQUESTED THAT THE CITY PROVIDE THEM WITH A TWO YEAR PERIOD IN WHICH TO OBTAIN REPLACEMENT LAND, WHICH IS CURRENTLY INVOLVING THE CITY IN MULTIPLE PARTY LAND ACQUISITION/ EXCHANGES IN ORDER TO ACQUIRE THE LAND FOR THE FUTURE LAND EXCHANGE WITH THE ARMY. MEAD CORPORATION WANTED THE ACQUISITION PROCESS TO BEGIN AT THAT TIME, AND ASKED FOR 24 MONTHS TO COMPLETE THE PROCESS. THE MOA ALSO REQUIRED A TIMBER HARVESTING CESSATION/MANAGEMENT PLAN TO PERMIT ALL ENVIRONMENTAL STUDIES TO BE

CONCLUDED WITH MINIMAL CHANGES TO THE ENVIRONMENT. AS OF TODAY, THE CITY OWNS 1.118 ACRES OF THE MEAD PROPERTY AND IS PREPARING TO CLOSE ON A SECOND ACQUISITION FOR AN ADDITIONAL 77 ACRES. THERE IS A THIRD OPTION BEING NEGOTIATED WHICH COULD PLACE THE REMAINDER OF THE LAND UNDER CITY OWNERSHIP IN THE NEAR FUTURE. THE CITY WILL OWN THE REMAINDER NO LATER THAN MARCH 15, 1996, BASED ON THE ACQUISITION AGREEMENT WHICH IS IN EFFECT WITH MEAD.

THE CITY OF COLUMBUS HIRED AN ENVIRONMENTAL ENGINEERING FIRM TO COMPLETE ALL OF THE STUDIES, SURVEYS, ANALYSIS, PLANS AND OTHER DOCUMENTATION REQUIRED. WORK STARTED IN NOVEMBER 1993. MID 1994, THE ARMY REQUESTED THE LEVEL OF DOCUMENTATION BE MODIFIED AND UPGRADED TO PRODUCE AN ENVIRONMENTAL IMPACT STUDY (EIS). THIS COST THE COMMUNITY AN ADDITIONAL \$400,000+. BECAUSE OF THE EXCESSIVE TIME THE PROJECT WAS TAKING, AND CRITICAL NEED FOR THE LAND FOR LANDFILL, A SEPARATE SUPPLEMENTAL AGREEMENT WAS CREATED BY THE CORPS OF ENGINEERS, WHICH ENABLES AN EXCHANGE FOR THE LANDFILL NEED TO BE ACCOMPLISHED WHILE THE REMAINDER OF THE STUDIES ARE ONGOING. WE ARE CURRENTLY PLANNING ON EXCHANGING APPROXIMATELY 380 ACRES SOUTH OF FORT BENNING TO THE ARMY FOR 350 ACRES COMPRISING THE BEST ENVIRONMENTAL LOCATION ON THE 3,100 ACRE TRACT ON FORT BENNING. WE HAD TO COMPLETE A SEPARATE ENVIRONMENTAL ASSESSMENT (EA) FOR THE

LANDFILL ACTION. THIS SEPARATE EA HAS COST THE CITY OVER \$110,000.

THE CURRENT STATUS OF THE DOCUMENTATION, AND THE APPROXIMATE COST OF EACH SECTION FOLLOWS:

<u>1. LANDFILL ENVIRONMENTAL ASSESSMENT (EA)</u>	\$111,000
ENVIRONMENTAL ASSESSMENT BASIC DOCUMENT:	\$67,000
APPROVED BY THE CORPS OF ENGINEERS	
BIOLOGICAL ASSESSMENT	\$30,000
APPROVED BY THE DEPARTMENT OF INTERIOR, FISH & WILDLIFE SERVICE	
CULTURAL RESOURCES SURVEY	\$4,000
APPROVED BY THE GEORGIA DEPARTMENT OF NATURAL RESOURCES, STATE HISTORIC PRESERVATION OFFICE	
WETLAND SURVEY	\$10,000
APPROVED BY THE CORPS OF ENGINEERS	
WE ARE AWAITING ISSUANCE OF THE FINDING OF NO SIGNIFICANT IMPACT WHICH IS DUE WITHIN 30-60 DAYS FROM THE ARMY. (THE ENVIRONMENTAL ASSESSMENT OF THE 350 ACRES TOOK APPROXIMATELY 15 MONTHS TO COMPLETE.)	
<u>2. DRAFT ENVIRONMENTAL IMPACT STUDY (DEIS)</u>	<u>\$1,349,000</u>
VOLUME I: BASIC DEIS	\$585,000
BEING REVIEWED BY FORT BENNING AND THE CORPS OF	

## ENGINEERS

VOLUME II: WETLAND SURVEYS \$99,000

APPROVED BY THE CORPS OF ENGINEERS

VOLUME III: BIOLOGICAL ASSESSMENT (BA) \$450,000+

(5 SUB VOLUMES)

THESE REFLECT 12 MONTHS OF FIELD OBSERVATIONS

VOLUME A: FORT BENNING PROPERTY BA

VOLUME B: MEAD PROPERTY BA

VOLUME C: COMPARISON OF THE TWO TRACTS

VOLUME D: PROPOSED RESOURCE MANAGEMENT PLAN FOR THE CITY TO USE FOR THE CURRENT FORT BENNING LAND

VOLUME E: PROPOSED RESOURCE MANAGEMENT PLAN FOR THE ARMY TO USE FOR THE MEAD PROPERTY WHICH IT WILL RECEIVE (THESE VOLUMES ARE BEING REVIEWED BY THE ARMY PENDING SUBMISSION TO THE FISH & WILDLIFE SERVICE FOR APPROVAL)

VOLUME IV: CULTURAL RESOURCES SURVEY (3 VOLUMES) \$200,000+

APPROVED BY THE GEORGIA DEPARTMENT OF NATURAL RESOURCES, STATE HISTORIC PRESERVATION OFFICE

VOLUME V: PRELIMINARY ASSESSMENT SCREENING \$15,000

APPROVED BY THE CORPS OF ENGINEERS

COVERS AN APPROXIMATE RANGE OF 45 DIFFERENT

ENVIRONMENTAL ISSUE AREAS SUCH AS, CLEAN AIR, CLEAN

## WATER, ILLEGAL DUMPING, ETC.

THIS HAS PROVEN TO BE AN EXTREMELY EXPENSIVE AND LENGTHY PROCESS FOR OUR COMMUNITY. IT IS ESTIMATED THAT IT COULD TAKE AN ADDITIONAL FIVE TO SIX MONTHS, WITHOUT ANY PROBLEMS, TO BE ABLE TO REACH A DECISION. THE CITY JUST APPROVED AN ADDITIONAL \$200,000 TO THE CONTRACTORS TO KEEP THE PROCESS ON TRACK. WHAT WE FOUND IN ALL OF THIS DOCUMENTATION CAN BE SUMMARIZED AS FOLLOWS. IN THE AREA OF WETLANDS, WE BASICALLY VERIFIED WHAT IS SHOWN ON THE NATIONAL WETLAND INVENTORY MAPS. IN THE CULTURAL RESOURCES SURVEY WE FOUND, OR VERIFIED, 10-14 EARLY AMERICAN ARTIFACT LOCATIONS ON EACH TRACT THAT ARE WORTHY OF SOME PROTECTION. IN THE AREA OF THREATENED AND ENDANGERED SPECIES WE VERIFIED THAT THERE IS ONE ACTIVE CLUSTER OF RED-COCKADED WOODPECKERS ON THE FORT BENNING TRACT, CONSISTING OF A GROUP OF RCW'S OCCUPYING A NUMBER OF SEVEN TREES WITH CAVITIES, AND SOME OF THE PROPERTY CONTAINS FORAGING AREA FOR SEVERAL RCW CLUSTERS ON ADJOINING FORT BENNING PROPERTY.

INITIALLY THE CITY HOPED TO BE ABLE TO DEVELOP, FOR ECONOMIC DEVELOPMENT, SLIGHTLY OVER 2,100 ACRES OF THE TOTAL 3,100 ACRE FORT BENNING TRACT. THE REMAINDER WAS IDENTIFIED FOR LANDFILL, PARKS, AND WETLANDS. AS A RESULT OF THE BIOLOGICAL ASSESSMENTS THAT AMOUNT OF

POTENTIAL ACREAGE HAS BEEN REDUCED. BECAUSE OF THE ENDANGERED SPECIES ACT, AND THE FACT THAT FORT BENNING RECEIVED A JEOPARDY BIOLOGICAL OPINION FROM THE FISH & WILDLIFE SERVICE IN 1994, BASED ON THE RCW POPULATION ON THE INSTALLATION, MUCH OF THE BIOLOGICAL ASSESSMENT HAD TO BE REVISED. THE REVISIONS NOW CONSIDER THE PRESENT MAXIMUM RCW HABITAT IN THE STUDIES, AND IT ALSO CONSIDERS THE MAXIMUM FUTURE POTENTIAL RCW HABITAT FOR THE SAME TRACTS. RECOMMENDATIONS ARE BASED ON THE PROJECTIONS OF THE MAXIMUM FUTURE POTENTIAL RCW HABITAT ASSESSMENT. IT SHOULD BE NOTED THAT THESE CALCULATIONS ARE BASED ON A PROJECTION OF APPROXIMATELY 50 YEARS. HOWEVER, IT TOTALLY DISREGARDS THE ECONOMIC IMPACT OF ACHIEVING THE MAXIMUM FUTURE POTENTIAL. IT ASSESSES THE TRACTS ASSUMING THE SIGNIFICANT REPLANTING OF LONG LEAF PINE ON BOTH TRACTS, REPLACING LOBLOLLY AND OTHER TYPES OF PINE, AND CONSIDERS SLOPE OF THE GROUND AND SOIL TYPES. BASED ON ALL OF THE ABOVE, AND THE RECOMMENDATIONS OF THE BIOLOGISTS WORKING ON THE PROJECT, THE CITY OF COLUMBUS HAS DEVELOPED IN ITS LAND USE PLANS AN AREA OF APPROXIMATELY 725 ACRES WHICH ARE PROPOSED TO BE SET ASIDE AS A HABITAT CONSERVATION AREA (HCA). THIS LEAVES APPROXIMATELY 1,400+ ACRES FOR ECONOMIC DEVELOPMENT (SEE MAP ENCLOSURE 2). THE RESULT IS THAT THE EXCHANGE PROVIDES 3,200 ACRES TO THE ARMY WITHOUT CONSTRAINTS, AND THE CITY RECEIVES 3,100 ACRES WITH SIGNIFICANT CONSTRAINTS. HOWEVER, THE NEED FOR THE LAND IS MORE CRITICAL TODAY

THAN IT WAS WHEN THE CONCEPT ORIGINATED IN 1988, AND THE CITY OF COLUMBUS IS COMMITTED TO BRINGING THE LAND EXCHANGE TO A SUCCESSFUL CONCLUSION, EVEN THOUGH THE COST CONTINUES TO RISE. SINCE SEPTEMBER, 1995, THE CITY HAS COMMITTED OVER \$1,500,000 TO THE STUDIES, ANALYSES, GOVERNMENT EXPENSE REIMBURSEMENT TO THE CORPS OF ENGINEERS (\$100,000), AND OTHER MINOR EXPENSES. THIS IS A CLASSIC EXAMPLE OF THE COST OF COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT ON A COMMUNITY WORKING TO CREATE AN ENVIRONMENT FOR JOB CREATION AND JOB RETENTION.

AS A RESULT OF ALL OF THE WORK ON THE ENVIRONMENTAL STUDIES IT BECAME APPARENT THAT OUR MILITARY INSTALLATIONS ARE FACED WITH A REAL DILEMMA. THEY WERE CREATED BY OUR NATION FOR THE STATIONING, TRAINING, AND MAINTENANCE OF OUR ARMED FORCES AND THEIR READINESS. IN MANY CASES THE ACTUAL AMOUNTS OF ACREAGE ARE INADEQUATE AS A RESULT OF NEW WEAPON SYSTEMS, LONGER RANGE WEAPON SYSTEMS, FASTER MECHANIZED INFANTRY, ARMOR, AND SUPPORTING VEHICLES, AND THE GREAT STRIDES OUR ARMED FORCES HAVE MADE IN IMPROVING BATTLEFIELD TACTICS. THESE ENVIRONMENTAL STUDIES IDENTIFIED THAT IN THE MIDDLE OF CRITICAL TRAINING AREAS THE INSTALLATIONS ARE REQUIRED TO INSURE THAT THEY AVOID ANY DAMAGE TO LOCATIONS THAT CONTAIN PLANTS, BIRDS, AND ANIMALS THAT ARE ON THE THREATENED AND ENDANGERED SPECIES LIST, AREAS THAT

PROVIDE FORAGING AND HABITAT FOR THESE, AS WELL AS SITES CONTAINING OLD ARTIFACTS. SOME OF THE INSTALLATIONS AFFECTED INCLUDE: FORT BENNING, GEORGIA; FORT STEWART, GEORGIA; FORT BRAGG, NORTH CAROLINA; FORT JACKSON, SOUTH CAROLINA; CAMP LEJUNE, NORTH CAROLINA; FORT POLK, LOUISIANA; CAMP BLANDING, FLORIDA; FORT GORDON, GEORGIA; AND EGLIN A.F.B., FORT WALTON, FLORIDA. EVERY BASE AND INSTALLATION IN OUR NATION IS AFFECTED IN SOME WAY.

TO ILLUSTRATE THIS POINT I WILL ONLY CITE THE RCW. IT IS ONE THAT CAUSES THE MOST CONTROVERSY IN THE SOUTHEAST UNITED STATES. A MALE FEMALE PAIR OF RCW'S OCCUPY A NEST AND HAVE IN THEIR CLUSTER A NUMBER OF OTHER MALES. AT FORT BENNING A TYPICAL CLUSTER NEEDS AN AVERAGE OF 250 ACRES OF LAND CONTAINING THE RIGHT DENSITY OF PINE THAT IS PROPERLY MANAGED. THE FISH & WILDLIFE SERVICE RECENTLY CONCLUDED A LENGTHY PROCESS WORKING WITH FORT BENNING, NATURAL RESOURCES PERSONNEL, TO HELP THEM DETERMINE A FUTURE GOAL FOR THE TOTAL NUMBER OF THESE CLUSTERS FORT BENNING NEEDS. FORT BENNING CURRENTLY HAS APPROXIMATELY 180+ ACTIVE RCW CLUSTERS. THE INSTALLATION HAS DEVELOPED THE REQUIRED PLANS TO PUT 45,000 ACRES INTO VARIOUS STAGES OF RCW MANAGEMENT. THEIR NEW GOAL IS TO BUILD THEIR POPULATION TO 360 RCW CLUSTERS. THIS WILL PLACE 90,000 ACRES OF THE INSTALLATION INTO VARIOUS STAGES OF RCW MANAGEMENT. THIS IS THE MAXIMUM AMOUNT OF



FUTURE POTENTIAL HABITAT AVAILABLE ON THE INSTALLATION. THE INSTALLATION IS REQUIRED TO DEVELOP AND IMPLEMENT A LONG LEAF PINE TREE PLANTING AND MAINTENANCE PROGRAM INTO THE LONG RANGE FUTURE TO ACHIEVE THIS GOAL. THE COST IS NOT CONSIDERED A RELEVANT FACTOR. HOWEVER, THE BULK OF THE MONEY WILL COME FROM THE INSTALLATIONS OPERATIONS AND MAINTENANCE ACCOUNTS, WHICH SERIOUSLY DEGRADES THE LIMITED FUNDS AVAILABLE FOR TRAINING, OPERATIONS AND MAINTENANCE. IF ANY SOLDIER VIOLATES THE GUIDELINES PERTAINING TO THE PROTECTION OF THREATENED AND ENDANGERED SPECIES, THE SOLDIER AND HIS CHAIN OF COMMAND IS SUBJECT TO LITIGATION ACTION, AND THE INSTALLATION TO CENSURE. AS WE SAID INITIALLY, FORT BENNING CONSISTS OF APPROXIMATELY 182,000 ACRES. IF YOU REMOVE FROM THE INSTALLATIONS NATURAL RESOURCES LAND MANAGEMENT PLAN, LAND AREAS NOT AVAILABLE TO SUPPORT THESE SPECIES, REMOVE IMPACT AREAS, BARRACKS AREAS, CANTONMENT AREAS, AIRFIELDS, MAJOR ROADS, AND SOME OTHER AREAS SUCH AS UNSUITABLE LAND ADJOINING THE RIVER, THE NET IMPACT IS THAT IS THAT THE INSTALLATION WILL EVENTUALLY HAVE OVER AN ESTIMATED 70 PERCENT OF ITS PRIME TRAINING LAND BEING USED SIMULTANEOUSLY FOR TRAINING AND RCW MANAGEMENT. AS BIOLOGISTS LEARN MORE ABOUT THE SPECIES THEY HAVE BEEN WRITING MORE STRINGENT PROTECTION GUIDELINES. THIS IS AN ONGOING PROCESS.

IN ACCORDANCE WITH THE ENDANGERED SPECIES ACT, THE FISH &

WILDLIFE SERVICE, UNDER THE DIRECTION OF THE SECRETARY OF THE INTERIOR. IS ASSIGNED WITH THE POWERS TO IMPLEMENT PLANS FOR PROTECTION AND CONSERVATION OF SPECIES LISTED AS BEING IN JEOPARDY. THERE IS CURRENTLY NO APPEAL AUTHORITY FOR THE MILITARY OTHER THAN THE FISH & WILDLIFE SERVICE. AS MENTIONED, THE MANAGEMENT GUIDELINES FOR THE RCW CAN BE REVISED AS ADDITIONAL INFORMATION IS GATHERED BY BIOLOGISTS. THE CURRENT ARMY GUIDELINES ARE CONTAINED IN A MANUAL PUBLISHED BY THE U.S. ARMY CERL " MANAGEMENT GUIDELINES FOR THE RED-COCKADED WOODPECKER ON ARMY INSTALLATIONS." BIOLOGISTS WHO DO WORK FOR THE FISH & WILDLIFE SERVICE WERE SOME OF THE KEY DRAFTERS OF THIS MANUAL. UNDER THE ESA, SECTION 7, EVERY FEDERAL AGENCY MUST INSURE THAT EVERY ACTION AUTHORIZED, FUNDED, OR CARRIED OUT IS NOT LIKELY TO JEOPARDIZE THE CONTINUED EXISTENCE OF THREATENED OR ENDANGERED SPECIES. ADVERSE ACTION INCLUDES TAKING. TAKING IS FULLY DISCUSSED IN SECTION 9. IF THE FISH & WILDLIFE SERVICE RECOMMENDATIONS MADE TO PROTECT RCW COLONIES ARE NOT FOLLOWED (COST IS NOT AN ACCEPTABLE RESPONSE) AND A COLONY IS ABANDONED FOLLOWING HABITAT ALTERATION, THERE IS STRONG EVIDENCE OF A TAKING. THIS BRINGS WITH IT CENSURE, AND THE POSSIBILITY OF LITIGATION. THERE IS NO PROVISION FOR THE DEMAND PLACED ON THE LAND DURING INTENSE TRAIN UP PERIODS, MAJOR FIELD EXERCISES, TRAINING OR READINESS ACTIVITIES. THERE IS NO PROVISION FOR WARTIME OR PRE-WARTIME PREPARATIONS. SOLDIERS AND COMMANDERS REMAIN SUBJECT TO CENSURE AND LITIGATION.

TODAY MANY INSTALLATIONS HAVE IMPLEMENTED SIGNIFICANT CHANGES TO THE WAY MEMBERS OF THE ARMED FORCES TRAIN AS A RESULT OF THE RCW AND OTHER SPECIES GUIDELINES THAT HAVE BEEN DEVELOPED AND IMPLEMENTED. THESE WERE STARTED IN THE 1980'S AND ARE BECOMING PROGRESSIVELY MORE STRINGENT. THE FOLLOWING ARE EXAMPLES OF MILITARY TRAINING GUIDELINES WHICH HAVE BEEN DESIGNED AND IMPLEMENTED TO PROTECT THE EXISTING AND FUTURE HABITAT FOR A COUPLE OF PROTECTED SPECIES, LARGELY THE RCW:

TRAINING NEAR A RCW CLUSTER WILL BE LIMITED TO DISMOUNTED (NO VEHICLES) TRAINING OF A TRANSIENT NATURE

THERE WILL BE NO FIXED TRAINING (BIVOUACS, FIGHTING POSITIONS, ETC) IN THE VICINITY OF A RCW CLUSTER

TRACKED VEHICLES CAN MOVE ONLY ON DESIGNATED CLEARED AND MAINTAINED ROADS

TRACKED AND WHEELED VEHICLES CAN CROSS STREAMS ONLY AT APPROVED OR MARKED STEAM CROSSINGS

IN THE RCW HABITAT RESTORATION AREA THERE WILL BE NO DIGGING, OR CUTTING OF VEGETATION, EXCEPT HARDWOODS FOR CAMOUFLAGE

IN THE RCW HABITAT RESTORATION AREAS THERE WILL BE NO USE OF SIMULATORS, CS GAS, OBSCURANT SMOKE, SIGNAL FLARES,

PYROTECHNICS, OR INCENDIARY DEVICES

HOVERING ROTARY WING AIRCRAFT OVER RCW CLUSTERS IS PROHIBITED DURING THE NESTING SEASON MARCH THROUGH JULY (5 MONTHS)(DIFFERENT FOR OTHER LOCATIONS)

HOVERING ROTARY WING AIRCRAFT OVER THE BALD EAGLE PRIMARY AND SECONDARY EXCLUSION ZONES IS PROHIBITED DURING THE NESTING SEASON FEBRUARY THROUGH MAY (4 MONTHS)

NO TRAINING WITHIN 100 FEET OF THE INCISED GROOVEBUR (A PLANT) OTHER IDENTIFIED PLANTS ARE TREATED THE SAME

BIVOUACS AND BATTALION LEVEL AND BELOW COMMAND POSTS ARE ALLOWED IN THE RCW HABITAT RESTORATION AREAS THAT ARE OVER 10 YEARS IN AGE; FIXED ACTIVITIES CANNOT BE WITHIN 200 FEET OF CAVITIES OR OF MORE THAN 18 HOURS DURATION

NO BIVOUACS ARE ALLOWED IN PLANTED PINE AREA THAT ARE UNDER 10 YEARS OF AGE

WHEELED VEHICLES ARE PERMITTED TO TRAVEL AND REMAIN IN CLUSTERS AS LONG AS SOIL EROSION LEVELS REMAIN WITHIN TOLERANCE LIMITS FOR A GIVEN SOIL SERIES AND RUTTING IS NOT GREATER THAN 6 INCHES (WEATHER DEPENDENT TRAINING)

BIVOUACS AND BATTALION LEVEL AND BELOW COMMAND POSTS WITH FIXED ACTIVITIES ARE ALLOWED IN NON-MANAGED PINE FORESTS AND HARDWOOD AREAS, PROVIDED THAT EROSION IS LIMITED OR

## PROHIBITED

VEHICULAR TRAFFIC CAN OCCUR ON ANY ROADWAY APPROVED BY A FORESTER, BIOLOGIST, ENGINEER, OR SOIL SCIENTIST WORKING ON SITE, PROVIDED THAT EROSION DOES NOT EXCEED TOLERANCE LEVELS

HERE IS THE REAL EFFECT. WE ARE RAPIDLY TYING THE HANDS OF ALL MILITARY COMMANDERS AS THEY ATTEMPT TO CONDUCT TRAINING AND MAINTAIN THE READINESS OF THEIR ASSIGNED FORCES IN ACCORDANCE WITH THE GUIDANCE FROM THE COMMANDER IN CHIEF AND THE CONGRESS. THE DEPARTMENT OF DEFENSE HAS LOST MUCH OF ITS CONTROL OVER THE LAND INTRUSTED TO IT, TO ACCOMPLISH THE MISSIONS ASSIGNED. THE DEPARTMENT OF INTERIOR IS DETERMINING EXTERNAL CONSTRAINTS UNDER WHICH THE DEPARTMENT OF DEFENSE MUST DEVELOP METHODS TO FUND ENVIRONMENTAL COSTS AND CONDUCT TRAINING IN WAR FIGHTING SKILLS WITHOUT VIOLATING ENVIRONMENTAL GUIDELINES.

RECOMMENDATION: WE RECOMMEND THAT THE DEPARTMENT OF DEFENSE, A CABINET LEVEL DEPARTMENT, WHICH KNOWS THE MISSIONS IT IS ASSIGNED BY THE COMMANDER IN CHIEF, BE GRANTED AUTHORITY TO APPROVE REQUESTS FROM INSTALLATION COMMANDERS WHO ARE UNABLE TO PROPERLY, EFFECTIVELY, OR ECONOMICALLY, TRAIN ITS FORCES, MAINTAIN READINESS, OR

SUPPORT MOBILIZATION, TO WAIVE ASPECTS OF THE ESA RELATED GUIDELINES NECESSARY FOR MISSION ACCOMPLISHMENT. ALSO REQUEST YOU CONSIDER SOME OPTION FOR A DOD INSTALLATION TO EXTEND OUT COMPLIANCE WHEN SUFFICIENT FUNDS ARE NOT AVAILABLE IN THE BUDGET. OTHERWISE THEY ARE HELD ACCOUNTABLE FOR IMPOSSIBLE DECISIONS. THESE ACTIONS DO NOT WEAKEN THE ESA, BUT THEY DO PERMIT THE DOD THE OPPORTUNITY TO CONTROL THEIR OWN DESTINY. IF ALL LANDS, PUBLIC AND PRIVATE, WERE EQUALLY ADMINISTERED UNDER THE ESA, THEN THOSE LANDS SET ASIDE FOR DOD WOULD NOT BE SEEN AS THE LAST CRITICAL ENVIRONMENTAL DOMAINS FOR SPECIES THAT ARE DECLINING.

AGAIN, THANK YOU FOR THIS OPPORTUNITY. IF EVER WE NEEDED ASSISTANCE AND A COMMON SENSE APPROACH IT IS NOW, AND IF NOTHING ELSE WE HAVE BEEN ABLE TO SHOW YOU A PART OF THE COST IN REAL DOLLARS WHICH HAVE RESULTED FROM THE METHOD OF IMPLEMENTATION OF THESE MANDATES. BOTH ON A SMALL COMMUNITY, AND ON THE DEPARTMENT OF DEFENSE.



# CONCEPT LAND EXCHANGE MAP

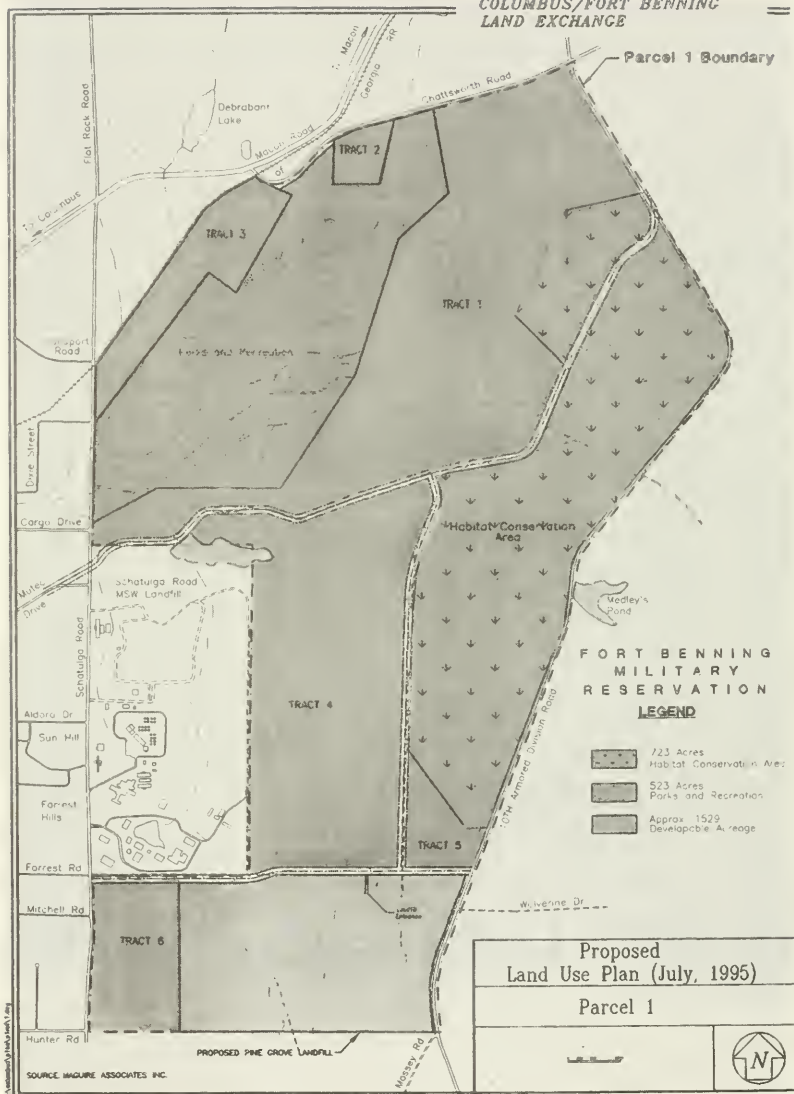
COLUMBUS, GEORGIA

G. TUNNELL-SPANGLER & ASSOCIATES

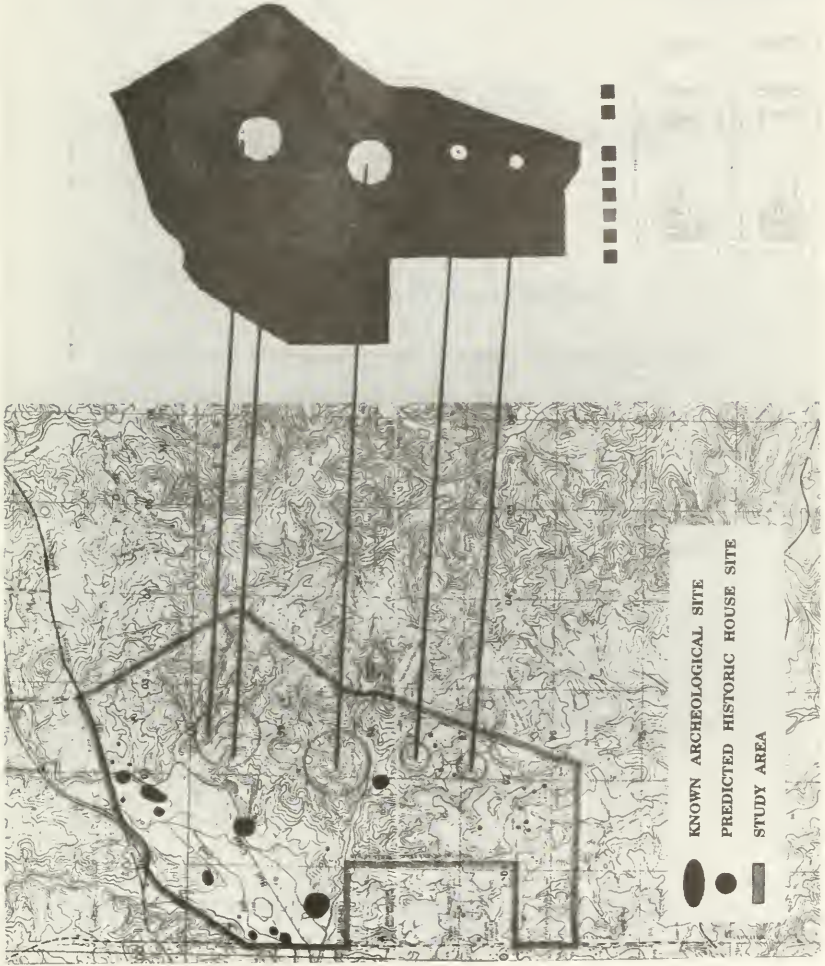
APRIL 1993

1-001

**COLUMBUS/FORT BENNING  
LAND EXCHANGE**









# Safari Club International

A NATIONAL ORGANIZATION • DEDICATED TO CONSERVING WILDLIFE AND PRESERVING HUNTING

## STATEMENT OF SAFARI CLUB INTERNATIONAL

TO THE  
COMMITTEE ON RESOURCES  
OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING  
H.R. 2275, THE ENDANGERED SPECIES  
CONSERVATION AND MANAGEMENT ACT OF 1995

Submitted by John J. Jackson, III  
President of Safari Club International  
September 20, 1995



## INTRODUCTION

I would like to thank the Committee for this opportunity to express the views of Safari Club International (SCI) for the record of this hearing. We are in support of H.R. 2275, the Young-Pombo bill, and I would like to speak directly to those aspects of the bill that reverse the negative effect of the Endangered Species Act (ESA) on foreign species of wildlife.

## OUR DIRECT EXPERIENCE

For more than twenty years I have personally visited many of the countries in Africa which are affected by the ESA, or to be more specific, by the way in which the ESA is currently administered. I have seen villages deep in the jungles of Ethiopia where it is unusual for men to live past 30 years and where \$20 is more than most people see in a year. I have seen the terrible impacts of chronic poverty in the remote areas of Tanzania. I have also seen what it means to these people to have a foreigner in their midst who is willing to pay them salaries for assisting him on his quest for big game. To them, hunting is an ancient and honored practice and they understand it implicitly. The fact that a foreigner will engage in the hunt and at the same utilize the wildlife in the vicinity of their village in a way that brings them wealth is astounding and wonderful. When a hunt is successful, they celebrate with the hunter in the traditional manner and their joy is real and multifold.

I have also seen and heard from the mouths of the people living in these remote areas how the visits by foreign hunters and the money that is brought into their villages on a regular basis by the safari operators causes them to resist the poachers who prowl their hunting grounds. They talk enthusiastically about the importance of keeping the wildlife and of having the tourist hunters return year after year.

Unfortunately, I have also had one more personal experience. For more than five years, as chairman of some of the key committees of SCI, as trial counsel to SCI, and now as its president, I have seen our own government deny and frustrate the aims and goals of these people. Our government has acted in ignorance and with arrogance. I have had government administrators and attorneys tell me to my face that they had to take restrictive and negative actions because they were afraid of

being sued by fanatic protectionist organizations if they approved the importation of hunting trophies. I have seen these same officials develop a secret set of "guidelines" which were unfounded, ill-conceived, unmeetable and unnecessary, and then impose these guidelines to deny the benefits of what the Africans call "tourist safari hunting." I know these officials after having worked with them for so many years. They are not personally arrogant, but the actions they have taken or condoned without proper scientific information and without the courtesy of consulting with their professional peers in the countries they are affecting have been arrogant. I have attached to my statement letters from wildlife conservation officials of Ethiopia pleading with our government to authorize the importation of a few trophies a year because the income was critical to the continuation of their wildlife conservation programs. Our government flatly denied the permit applications. A short while later, the entire game program of Ethiopia came to a halt and with it, the operations of safari operators which were the only thing standing between the elephants of that country and the poachers.

I have also attached to my statement a permit application which I filed in December, 1992, as a test case to allow the importation of the horn of a de-horned and still-living black rhinoceros from Zimbabwe. To this day, our government has not yet acted on the permit. The result? For lack of funds, the Zimbabwean program to de-horn black rhinos to make them less attractive to poachers has failed and the population of black rhinos has plummeted to the edge of extinction. There are niggling arguments that the poachers might have killed the rhinos anyway, but the experiment never had a chance to work because our government was afraid that it would get sued by protectionist organizations -- organizations which spend their "charitable" dollars to criticize and sue but which do not put a penny into research or other conservation efforts.

I will detail, in narrative and in attachments, these and many other instances in which our government has consistently acted contrary to the spirit and the letter of the ESA. Despite the mandate of a Federal Court (in Connor v. Andrus, 453 F. Supp. 1037, (1978) W.D.Texas) the Department of the Interior does not take seriously its duty to conserve wildlife when the species occur outside the United States. Instead, they have allowed the welfare of this wildlife, and the welfare of the people who share their lands and lives with it, to become a political pawn in an awful game of "biopolitics." A former special assistant to the Director of the U.S.

Fish and Wildlife Service saw this for himself and wrote about it in an article called Eco-Imperialism. I have attached a copy.

### THE NATURE AND WORK OF SCI

SCI is an international conservation organization representing more than one million conservationists who are sportsmen and women. We are headquartered in Tucson, Arizona, where we operate a state-of-the-art wildlife and natural history museum. While the bulk of our membership is in the United States, where we have more than 145 chapters in 43 states, we also have chapters and members in more than 25 countries around the world.

We are a charitable organization and our major activities are education of the public about wildlife and about the role of sportsmen and women in conserving it, conservation, and protection of the right to hunt. Each of our chapters is required to raise funds and to carry out at least one conservation project every year. We have more than 500 ongoing conservation projects. These projects are usually done in cooperation with the wildlife officials of the state or country where the chapter is located. In addition, we carry out many conservation activities through our international staff. I have attached our most recent report which details how we spend or direct the spending of more than \$2.5 million per year on conservation activities. Between our direct expenditures from our headquarters and the money spent on conservation by our members and our chapters, we contribute \$27 million annually to wildlife and habitat conservation.

Conservation education is also a principle activity of SCI. I have already mentioned our museum, which hosts 126,000 school children and other visitors per year. In addition, we own and operate the American Wilderness Leadership School in the Bridger-Teton National Forest in Wyoming. Each year, we educate hundreds of elementary and secondary level teachers and resource people in wildlife ecology and conservation. In this way, tens of thousands of urban students gain a scientific understanding of the natural world and of wildlife conservation.

We also engage in community services. Through our Sportsmen Against Hunger program, we donate 155 tons of game meat annually to feed the poor and the homeless. Our chapters also operate "sensory safaris," in which sight-impaired youngsters and adults get their first, and often only "look" at wildlife. They are given guided tours in which they touch and sense wildlife mounts, while hearing about the kind of habitats in which these animals are found. We also provide school textbooks to rural communities which are part of Zimbabwe's CAMPFIRE program through our Books for Africa program, run by the SCI Sables (an SCI constituent organization of sportswomen).

#### HOW DOES THE ESA AFFECT FOREIGN SPECIES?

The purpose of the Endangered Species Act is to "provide a means whereby the ecosystems upon which endangered species ... may be conserved, [and] to provide a program for the conservation of such endangered species ...". (ESA, §2(b))

Essentially, the ESA does this by listing species as endangered (or threatened), by prohibiting certain uses of listed species unless authorized by permit, by listing the critical habitats of listed species, by developing recovery plans for listed species, and by controlling federal actions and permits for use of critical habitats (and thereby controlling much private use of such lands and waters).

The Endangered Species Bulletin published by the U.S. Fish and Wildlife Service states that there were 338 mammals listed under the Endangered Species Act (ESA) as of March 1, 1995. Of those, **277, or 82%, are foreign species.** According to the U.S. Fish and Wildlife Service's Office of Endangered Species in Washington, **no recovery planning** is done under the ESA for foreign species, because they have no implementation authority in foreign countries. Thus, for 82% of all mammal species listed as endangered or threatened under the ESA, the provisions of the Act dealing with critical habitat, recovery planning and control of federal activities and permits for use of critical habitats has no effect at all. The only provision of the ESA that comes into play is the prohibition on importation of listed species.

In other words, the only impact that the ESA has on foreign species is the negative control of preventing importation. With a few exceptions, the application of that prohibition is complete except as permits may be issued for importation.

### WHAT IS WRONG WITH THIS?

For more than 60 years the role of sportsmen as conservationists and the acceptance of wildlife use have been recognized and utilized in the U.S. as our major source of conservation funding. The excise taxes levied by the Pittman-Robertson/Dingell-Johnson/Wallop-Breaux Acts have redistributed sportsmen's money to the states for conservation. The result has been an amazing turn-around in species' declines and the replenishment of animals such as the beaver, elk, wild turkey and white-tailed deer. But since the advent of endangered species protection in the late 1960's, the prevailing doctrine when it comes to foreign species was that "protection" of a species by completely prohibiting its use was always a good policy. Preventing access to markets, through such means as import prohibitions, has been a standard part of all schemes for wildlife conservation.

Recently, loud protests to this negative, protectionist ideology have been heard from Africa and Asia. The countries of those regions are faced with quickly-expanding human populations who must get some benefit from their land if they are to survive.

The governments of these countries realized that their people will use their land to grow crops or graze cattle if there is no value to them in having wildlife. But if the wildlife proves to be valuable, it has been shown that people will maintain the habitats and protect the wildlife.

In many parts of Africa, you can find villagers in rural communities whose children were killed by marauding elephants. You can also hear tales of crops, which represented an entire year's income, destroyed overnight by wild animals or find the spoor of leopards right inside village compounds. This is the reality that rural Africans live with every day. To them, wildlife is not some cute and cuddly thing that can be used for fundraising purposes by some protectionist group in New York or Washington. It is a harsh reality that can kill you and your children and destroy your livelihood.

Since the value of wildlife is often dependent on international transactions, bans on importation of wildlife can have a devastating effect on the conservation of the species. Thus, the very prohibitions imposed to protect wildlife may very well act in the opposite manner.

Continued United States insistence on the use of import bans resulted in the filing of a formal diplomatic protest in April, 1995, by four African nations (Namibia, Zimbabwe, Botswana and Malawi). A copy of that protest is attached. They said that in their countries strict prohibitions on use did not work for conservation. "In our countries," they said, "inhabitants of our rural communities and large mammals compete for the use of the land." They asked the United States to recognize that uses of wildlife, such as restricted trophy hunting, were beneficial to the people and to the wildlife, and provided revenues for conservation.

### THE ROLE OF TOURIST SAFARI HUNTING

The members of SCI represent an important economic resource to the countries of Africa. At the same time, we are a force for conservation of the great mammals of Africa and all of the lands that they inhabit. The point is really very simple. Big game hunters, who come primarily from the United States, pay significant premiums for the privilege of hunting the many species to be found in Africa. This input of foreign exchange is earned at a very low cost in infrastructure development, because hunters are willing to take to the field without the extensive development of running water, electricity and resort hotel facilities. It is practical and effective in remote locations where nothing else is. It also converts species from varmints to game animals, which is a status that aids their restoration.

The ecological and biological costs of tourist safari hunting are also very low. It takes far less hunters than it does tourists to bring in the same amount of dollars, so the impact on the environment is much less. On the biological side, hunting is highly regulated, very few animals are taken, and the animals taken, being males, represent a genetic surplus. So it is quite possible to continue hunting of virtually all species without reducing the overall populations of animals. In fact in some cases, eliminating the aggressive old male animals from the population often



stimulates the growth of populations by letting more fertile younger males participate in the breeding.

The result of tourist safari hunting is the provisions of significant economic gains without a reduction in the biological capital.

One of our concerns, in fact, is that the rationale of the U.S. court cases that have effectively denied the use of hunting as a conservation tool for species such as the wolf and the grizzly bear may be applied to foreign species as well. We are now seeing pressure on the Administration from protectionist organizations to apply those decisions to the importation of hunting trophies of threatened species. Thus the ESA has become an unintended tool for undoing the policies and doctrine of wildlife use that worked so well for conservation in the U.S., and this blight is about to be visited even more broadly on the conservation programs of foreign nations.

#### **THERE IS A BETTER WAY**

A few days ago, Secretary of the Interior Babbitt told this very panel that the states should be given a much larger role in deciding how to protect endangered species and preserve their habitats. He suggested that they be asked to review the scientific information used for proposing listings and should be given responsibility for developing species recovery plans and for issuing conservation permits. If this is appropriate for the states, is it not even more appropriate for foreign nations?

Unlike the states, the foreign nations receive no taxpayers dollars for endangered species conservation. There are no federally-funded programs for habitat protection or for recovery planning. So when the United States lists a foreign species under the ESA it may impose a burden, but it does nothing at all to provide the means to deal with that burden. It is the foreign nations that are expected to carry the burden. In that case, they should certainly have the primary role in determining how such species are best conserved.

In fact, such a policy was enunciated many years ago by the Assistant Secretary of the Interior for Fish, Wildlife and Parks, but has been ignored by the U.S. Fish and Wildlife Service. At Congressional oversight hearings in October, 1982, the Assistant Secretary stated the policy of the Department of the Interior in regard to species listed under both CITES and the Act. He said that when the species occurred outside of the United States, the Department would be guided by the actions and determinations of the Parties to CITES in regard to that species.

In the case of foreign nations and the species which reside there, it is much more likely that those nations will have the best available information in regard to those species. They also have the responsibility for conserving their own wildlife and for meeting the needs of their own people. Even in our own country we learned a long time ago that wildlife conservation is not simply a matter of oratory and filing a few lawsuits by extremist organizations. We developed the brilliant mechanism of the Pittman-Robertson/Dingell-Johnson/Wallop-Breaux funds to assure that wildlife conservation was paid for by the citizens who cared about it most (the sportsmen and women), and that the money went to the state fish and game agencies, where it could do the most good. We operated on the principles of recognizing the benefits of wildlife to people and deriving the value from it for conservation long before that concept was called by the current term of "sustainable use."

We propose to you that Secretary Babbitt's principles be adopted for foreign species as well as for domestic species.

### THE ROLE OF CITES

In the case of foreign species, there is an additional element that acts for the conservation of wildlife – the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES (pronounced "sight-eez") is a treaty that came into effect in 1975 and now has 128 nations party to it. It is the largest and most comprehensive wildlife conservation treaty in the world.

The United States was a major supporter of the development of CITES. Pursuant to the Endangered Species Conservation Act of 1969, the U.S. hosted the international conference in 1973 at which CITES was negotiated and signed. The current

Endangered Species Act contains the provisions of law which implement CITES for the U.S.

The CITES parties meet approximately every two years and, by agreement, list species for which the regulation of international trade would assist in their conservation. Species which are currently in danger of extinction go on Appendix I and species which are threatened with endangerment go on Appendix II. There is also an Appendix III which allows any country to unilaterally list a species in its country for which international trade should be regulated for conservation purposes.

The basic trade regulation mechanisms of CITES are set forth clearly in the treaty. If a species is on Appendix I, it may not be traded for commercial purposes. Non-commercial shipments, such as personal effects, scientific specimens and hunting trophies, may be traded, but permits are required from both the exporting country and the importing country. Specific findings must be made before the permits are issued. These findings are to be made by conservation authorities designated for these purposes.

The exporting country must find that the shipment will not be to the detriment of the survival of the species. The importing country must find that the purpose to which the specimen will be put will not be detrimental to the survival of the species. If the specimens are live, then there are further requirements.

If a species is on Appendix II, then only an export permit is required. The same kind of "non-detriment" is to be made before the exporting country issues its permit. The importing countries do their part by assuring that listed species do not come into their countries without the proper export documents.

The CITES parties also discuss other issues regarding the implementation of the Convention. They are authorized to issue recommendations to improve the effectiveness of the Convention. Any country may take "stricter domestic measures" regarding trade in a listed species.

It is interesting to analyze the mammal species listed under the ESA in comparison to the listing of the same species under CITES. We reviewed the 87 foreign large mammal species listed under the ESA as either endangered or threatened. The

listings match in less than half the cases (in other words, only 42 out of 87 times is a species on CITES Appendix I and Endangered under the ESA, or is on CITES Appendix II and Threatened under the ESA).

A species listed on Appendix I cannot be traded for commercial purposes, but some limited use can be allowed in the form of hunting trophies or other non-commercial uses, provided it is legal in the country of origin and the requisite CITES findings are made and permits issued. But if the same species is listed as Endangered, then the allowable uses are, at least under current U.S. policy, much more limited. So there is a serious consequence from this mis-match in listings.

In addition, the CITES countries, which have better access to information and which allow discussion of issues between the country in which the wildlife occurs and other countries, allow more uses of wildlife than the United States does. For example, after reviewing the scientific information about the conservation of cheetah, an Appendix I species, the CITES parties agreed that a limited amount of export of hunting trophies would generate funds that would benefit cheetah conservation. A record of their discussions is attached. The parties authorized an export quota from Namibia, Botswana and Zimbabwe.

But the cheetah is listed under the ESA as endangered. So despite the decision of the CITES parties, the U.S. refused to issue permits for cheetah trophy imports, arguing that the "enhancement" standard of Section 10 of the ESA had not been met. I have attached a copy of a letter in which they state this. I have also been told personally, by U.S. officials, that it was their policy that there is never a case in which the hunting of a wild (non-rancher) specimen of an endangered species could enhance the survival of the species. Thus the U.S. has set itself up as the ultimate authority on the conservation of cheetahs, in opposition to knowledge and proven practice in three African countries and in opposition to the collective judgment of the CITES parties.

The situation so angered the country of Namibia that it introduced a resolution at the last CITES meeting (in Fort Lauderdale last November) calling on all countries to honor export quotas set by CITES. The resolution was adopted unanimously. I have attached a copy of the proposal, which includes an eloquent statement by Namibia about how some countries (read "U.S.") were abusing their power to close

their borders to imports that benefited conservation. I have also attached a copy of the final resolution.

The amazing thing is that despite this resolution, the U.S. is still not issuing cheetah import permits. I know, because I filed an application for one myself, as a test case.

#### OTHER EXAMPLES OF PROBLEMS

Presented below in outline form is a summary of examples of other specific problems that we at SCI are directly familiar with. We have voluminous documentation to back up each of these instances and would be glad to provide it for the Committee.

- Nile crocodile: Species downlisted by CITES in many countries but the U.S. has been extremely delinquent in changing U.S. rules to allow importation.
  
- Black-faced Impala in Namibia: Species taken on game ranches where income from hunting provides incentives to maintain wildlife habitat, but because there are wild populations in Angola, the U.S. will not authorize importation.
  
- Leopard in Mozambique: Despite CITES-approved quotas for exports, U.S. will not allow importation.
  
- Elephant -- Ethiopia: U.S. refused to permit importation of hunting trophies, insisting on expensive and unnecessary studies and development of programs to meet ESA "enhancement" standard by this desperately poor country without providing (or assisting in acquiring) the funds to do the work.
  
- Elephant -- Cameroon: After initial approval of two permits, the U.S. has suspended the approval of imports pending the development of programs to show "enhancement" of the survival of the species.

- Elephant -- Tanzania: For several years the U.S. denied approval for importation of hunting trophies despite the importance of that program in providing funds for the country's wildlife conservation program.

- Argali -- China: The U.S. ignored a plea from the Chinese wildlife authorities to support a limited hunting program that was the main source of funding for provincial wildlife management; the argali was listed as endangered on a "precautionary" basis, importations ceased and the hunting program collapsed.

- Hunting in CIS: U.S. officials cabled to a former Soviet country suggesting that species were endangered and hunting programs be closed; the actions appeared to be ideologically motivated.

(Attachments to statement were placed in the hearing record files of the Committee.)

# Houston Safari Club



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### STATEMENT OF HOUSTON SAFARI CLUB IN FAVOR OF REFORM OF THE FOREIGN ASPECTS OF THE ESA

The Endangered Species Act needs to be amended and incentives built into it. To this point in time, it has been a disincentive. It obstructs range nations' choice of conservation programs. Tourist hunting is a conservation measure of choice that generates revenue, gives the wildlife legitimate value in remote locations outside of protected areas, while it is low in risk and volume. Tourist hunting is a very important conservation tool that we deprive the range nations of when we list their species and interfere with trophy imports.

A few examples of many may demonstrate the problems. Agency personnel in the U.S. Fish and Wildlife Service shut down the importation of elephant trophies taken by tourist hunters in Tanzania that were taken on a CITES quota. The quota was only 50 elephants a year, out of a population of over 50,000 elephants. Nevertheless, the agency personnel stopped the importation of those trophies. Those hunts were generating approximately \$60,000.00 (\$60,000 X 50). In the two years it was closed, *i.e.*, trophy imports were not allowed, the country lost \$6 million dollars, 1990 and 1991. Countries with very stable elephant populations, like the Republic of South Africa and Namibia, suffered identical losses at the the same time.

Nile crocodile in the African countries have been downlisted on CITES. There has been a quota set, but the USF&WS has taken years to permit simple trophy imports.

The cheetah is another example. The cheetah has never been thought to be endangered in Namibia, and at the 8th conference of the parties of CITES, the world conservation community agreed upon a quota for the cheetah, because it would give it regulated value. Everyone was in agreement that thousands of cheetah had been shot on private land because it was a varmint, and that it would be much better served to be treated as a game animal and given value as such, much like the leopard had been done a decade before. That effort has been frustrated because the USF&WS has not permitted the importation of a single cheetah in three and one-half years.

Page 2

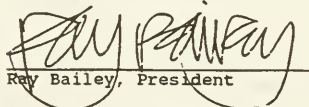
Another example is the leopard. Leopards were shot as varmints until the sport hunting community was able to persuade (thru a law suit) the U.S. authorities to downlist it to "threatened" to allow the importation of trophies, and now it has come back perhaps as many as a million in Africa. A leopard is much more valuable as a conservation tool than might be understood. It is more than a \$2,500 license. It is a minimum of fourteen days, and each bait has to be paid for, which can be \$10,000-15,000 of animals that would otherwise be surplus. It is a very important backbone, or core, species, to the safari industry. It is one of the "Big Five". It has never been threatened by tourist hunting, and no one has ever represented that it was.

Unfortunately, the USF&WS, despite years of effort by the hunting community, still will not allow the importation of leopards from Mozambique, although leopards are within the CITES quota created by the world conservation community. Mozambique, as a consequence, cannot be competitive with surrounding countries. That is, it can't have a safari industry, and all the benefits that go with a safari industry. Tourist safari hunting is a special, exceptional category of sustainable use. It is a fundamental tool of these range nations and there is little else available to replace it. We must stop interfering with the use of fundamental basic conservation tools.

These are just a few examples of why the Endangered Species Act has caused range nations tens of millions of dollars in loss of revenue as well as burdened them with additional costs.

The Houston Safari Club is an independent organization of sportsmen who since its inception in 1972 has been involved in the conservation of wildlife and the protection of hunters' rights. More than a million dollars has been funded by the Houston Safari Club on projects worldwide. We are thankful for this opportunity to express our views and remain at your service if you desire more information.

For the Organization



Ray Bailey, President





## *DALLAS SAFARI CLUB*

July 14, 1995

### STATEMENT OF THE DALLAS SAFARI CLUB IN FAVOR OF REFORM OF THE FOREIGN ASPECTS OF THE FEDERAL ENDANGERED SPECIES ACT

The Dallas Safari Club and its affiliates, have been long term supporters of wildlife conservation efforts for nearly 20 years. We have enjoyed a fine tradition of providing hundreds of thousands of dollars in grant funding to many worthwhile conservation efforts and outdoor educational programs. This organization has been a staunch supporter of the efforts made by State and Federal Officers in their endeavor to protect our natural resources, however, we are concerned over the frequent misapplication of the current Federal Endangered Species Act legislation. It is because of these concerns that we feel the need to reform the Federal Endangered Species Act, primarily the foreign aspects of such.

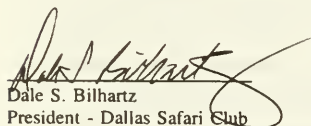
The United States should promote international applications of the "Sustainable Use" concept for wildlife management around the world. Many developing nations must be allowed to realize the value of the sustainable use of their wildlife as a renewable resource. We must make a commitment to allow the exporting countries to realize this value of their wildlife, as a preferred conservation mechanism.

Restricted quota based sport hunting not only provides an economic incentive for the local peoples directly involved, it also provides much needed income for the range state governments to finance ongoing conservation programs. These restricted tourist hunting quotas established by the Convention on International Trade in Endangered Species of Fauna and Flora, (CITES), of which our country is an active participant, should be accepted as the scientific standard in allowing importation. Certain species, for which there already exist CITES export quotas, are being denied import permits by our Fish & Wildlife Service under the current legislation. The grounds for denial usually arise from demands for often un-meetable studies and standards to be established by the individual requesting an importation permit prior to entry. Many of these species were legally harvested in countries where the species remains numerous and sport hunting quotas have been scientifically established through their CITES participation. Allowing the importing country to question the scientific authority over matters concerning the potential detriment of hunting and trophy export, severely limits the exporting country from developing sound wildlife management as a renewable resource, and only undermines any serious efforts to preserve the very species most at risk.

DSC STATEMENT IN FAVOR OF ESA REFORM  
PAGE 2

The Dallas Safari Club respectfully requests that Congress amend the Federal Endangered Species Act to call for the legal importation of species for which quotas have been established by the CITES Conference of the Parties. These various quota mechanisms developed by the 124 member countries represent the most effective means of achieving conservation of the species in their home ranges.

We appreciate this opportunity to address this most important matter, and look forward to the refocusing of our policies, through proper and necessary reform of the Federal Endangered Species Act, into a more reasonable posture, which not only recognizes the authorities in which that control should rest, but also truly advances world-wide wildlife conservation efforts.



Dale S. Bilhartz  
President - Dallas Safari Club

STATEMENT ON BEHALF OF THE SIERRA CLUB

Submitted to the

COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES  
October 5, 1995

Concerning

THE ENDANGERED SPECIES CONSERVATION  
AND  
MANAGEMENT ACT OF 1995 (H.R. 2275)

PREPARED BY JOHN LEARY & LAURIE MACDONALD

On behalf of its one-half million members, the Sierra Club appreciates this opportunity to submit written testimony for the record of this hearing. The Sierra Club vigorously supports a strong and vibrant federal Endangered Species Act and related laws that protect and conserve imperiled wildlife, plants and natural ecosystems. This Statement addresses the Sierra Club's views on reauthorization of the Endangered Species Act and, in particular, H.R. 2275, the "Endangered Species Conservation and Management Act of 1995."

First, this statement discusses the importance of the Endangered Species Act in confronting our challenge to preserve biological diversity, a critical component of our nation's natural heritage. Next, it reviews the Endangered Species Act's record of success, followed by a summary of some of the disturbingly irresponsible provisions contained in H.R. 2275. Finally, this statement concludes by suggesting some responsible and constructive measures which could increase the effectiveness of the current law.

#### THE CHALLENGE FOR THE ENDANGERED SPECIES ACT

After 25 years of commitment to environmental protection, new or reemerging crises are arising as the future of our nations's environmental laws are debated. Some of the mistakes made today may be corrected in decades to come, but the loss of species to extinction is absolutely irreversible. Right now, we humans are fortunate to share the earth with a variety of living organisms,

estimated between 10 million to 100 million species. With the demise of each species, we lose a part of the Earth's biological diversity. The loss of biological diversity represents not only a moral and ethical tragedy of unprecedented proportions involving natural systems which evolved over millions of years, it constitutes the loss of a priceless resource largely untapped and little understood by humankind, yet integral to our very survival. House Speaker Newt Gingrich has recognized that "[d]iversity of life is critical to our planet's survival."

Yet, we are faced with the greatest rate of species extinction since the disappearance of the dinosaurs. The recent study by the National Academy of Sciences' National Research Council (hereafter, NRC Report) reported to Congress that "species extinctions have occurred since life has been on earth, but human activities are causing the loss of biological diversity at an accelerating rate. The current rate of extinctions is among the highest in the entire fossil record, and many scientists consider it to have reached crisis proportions." By the year 2020, scientists estimate we may have lost as much as 20% of the world's biological diversity.

Thus, to paraphrase the comments of renowned biologist Norman Myers, the exceptional challenge confronting this generation of humans is to stem the rising tide of species extinctions. No generation in the future will ever face a similar challenge. If we fail to come to grips with the task, the damage will have been done

and there will be no second try. If we get on with the job, generations of the future will look back upon us as champions of the human condition. That is the spirit that must prevail during the current debate over reauthorization of the Endangered Species Act. We must embrace this historic challenge.

#### A RECORD OF SUCCESS FOR THE ENDANGERED SPECIES ACT

By passing the Endangered Species Act in 1973, Congress declared that this "irreplaceable loss to esthetics, science, ecology and natural heritage" must be reversed. As a result of that historic decision to stem the tide of accelerating loss of biological diversity, the Endangered Species Act has amassed a remarkable success record. Examples of species rescued from the brink of extinction exist in every state of the nation. Notable examples include the gray whale off the Pacific coast; the Atlantic Coast, Florida and Alabama populations of the brown pelican; the black-footed ferret in Wyoming, Montana and South Dakota; the Peter's Mountain mallow, a plant found only at one spot on earth in southwest Virginia; the greenback cutthroat trout in 15 Rocky Mountain states; and the American bald eagle, our nation's symbol, has increased dramatically in 40 states and has been removed from the list of endangered species.

In addition to the intrinsic values possessed by all living organisms and their natural ecosystems which cannot be measured in human economic or utilitarian terms, some vanishing species and

their habitat can be of untold value to humans. The Pacific Yew of the Northwest's endangered ancient forests and certain soft corals near Hawaii supply promising treatments for cancer. Skin compounds of vanishing frogs are potent antibiotics. The rosy periwinkle provides a drug effective against leukemia. Half of all drug prescriptions written in the United States contain a drug of natural origin. Even common drugs such as aspirin and digitalis are derived from natural sources. The role of the Endangered Species Act in saving these species or others that may in the future provide important medicines should not be underestimated.

Perhaps most importantly, the Endangered Species Act has served as an early warning when something is amiss in the ecological systems that wildlife as well as humans depend upon. The consequence of ignoring the Endangered Species Act's function as the proverbial "canary in the coal mine" can be economically devastating. Habitat loss is imperiling numerous fish species, a crucial food source and mainstay of many regional economies. In the Pacific Northwest, commercial and sport fisheries for salmon, steelhead and trout provide 60,000 jobs and contribute approximately \$1 billion in personal income to the region. Already, however, more than 100 native runs of salmon and steelhead have been lost and hundreds more are at risk. Their loss is not the loss of an amenity, but rather a sign of the ailing health of the natural system on which people's physical, cultural and economic life depends.

The record of the Endangered Species Act clearly shows that the law originally enacted by Congress, and subsequently amended, established a simple, successful formula: the law recognizes the array of reasons for conserving biological diversity and protects species and their habitat; species are listed according to purely biological evidence; in attempting to reach the science-based goal of recovery, the law goes to lengths to balance the means used with immediate human needs; and, in cases of uncertainty, it gives the benefit of the doubt, in a reasonable measure, to the species clinging to survival. The successes, though substantial, were achieved despite underfunding, understaffing, and undermining of the Act. Imagine the improvements in species recovery if such obstacles had not been placed in the way. While there is room for improvements, this should be accomplished by rational fine-tuning, not a whole-sale trashing of a tested and valid formula.

#### H.R. 2275 WOULD DISMANTLE THE ENDANGERED SPECIES ACT

H.R. 2275 dismisses a reasoned approach, and, based on a warped set of priorities, systematically dismantles the existing law. Throughout, H.R. 2275 is afflicted with new provisions that place politics over science, replace habitat protections with increased risk of extinction, jeopardize foreign species instead of shouldering responsibilities internationally, create gridlock instead of effective incentives, and favor special economic interests and foreign lobbyists over future generations.

H.R. 2275, if enacted, would do nothing less than abort over twenty



years of progress made under the Endangered Species Act. The discussion below is far short of an exhaustive list of the flaws to be found in this overreaching proposal, but effort is made to touch on the most egregious problem areas.

#### The Stated Purposes of the Act

The statement of findings, purposes and policy set forth in the original Endangered Species Act reflect an enlightened understanding of the value of protecting our natural ecosystems and the many benefits conferred by preserving biological diversity.

H.R. 2275, on the other hand, starts off by effectively repealing the original intent of the Act. Playing to the anecdotal and emotional fever fueling the current controversy over endangered species protection, the bill would deny the scientific fact that untempered development -- characterized by habitat destruction -- is a cause of species extinction. Instead, this ecological crisis is blamed on "inadequate conservation practices and natural processes."

The bill further denies that the consideration of economic impacts and property use are already built into the current law. Instead, it rewrites the findings, purposes and policy such that it illogically skews the focus of the Endangered Species Act away from the very challenge it is intended to confront.

### The Listing Process

The biologically-based determination to list an imperiled species as "endangered" or "threatened" is the key element which triggers the Endangered Species Act's umbrella of protections. Title III of H.R. 2275 forces upon the listing process burdensome substantive and procedural hurdles. At the same time, it severely restricts our ability to protect species through emergency listings. The potential for gridlock is raised further by new enormously broad and expensive notice and consultation requirements, which could cost the federal treasury exorbitant amounts in postage alone. Regardless of whether there is any scientific dispute, the bill mandates new peer review requirements for any listing, critical habitat designation or revision, or jeopardy determination. This new peer review process also creates great potential for financial conflicts of interest.

### The Definition of "Species"

H.R. 2275 finds other ways to make it difficult for species in danger to be listed. For instance, the bill ignores, in fact repudiates, sound science by discontinuing protections for distinct populations -- species that are not endangered throughout their entire world range. The National Academy of Sciences, through its NRC Report to Congress, emphasized the biological importance of protecting such "distinct populations."

Instead, H.R. 2275 requires a special act of Congress

designating such species populations to be of "national significance," a politically-charged term the bill leaves undefined. Imagine the fate of some of our most imperiled species if H.R. 2275 had been part of the original Endangered Species Act. While Congress might have been easily persuaded to make such a special designation for the bald eagle, the fate of imperiled population of the grizzly bear, gray wolf, or Pacific Northwest salmon runs would have been far less certain. But these species populations are not safe under this bill even now. H.R. 2275 reaches back retroactively and requires automatic delisting of all currently listed distinct populations, unless Congress intervenes.

#### The Recovery Goal

Since its inception, the ultimate goal of the Endangered Species Act has been "recovery," or the restoration of listed species to population levels at which they are no longer in danger of extinction and in need of the Act's protections. H.R. 2275's abandonment of this critical element of the Act's effectiveness is profoundly objectionable.

Title V of the bill installs a complex bureaucratic process by which the Secretary of the Interior is required to select a "conservation objective" for each listed species. In the end, this bill gives the Secretary the authority to arbitrarily reject recovery as the goal and choose a lower "conservation objective," even one that does nothing but prohibit the direct killing of

individual specimens of the listed species. Because intentional killing is rarely the main threat to endangered or threatened species (habitat destruction is the primary threat for most listed species), this provision would allow the Secretary to play God, empowering the Secretary with the discretion to allow a species to go extinct.

H.R. 2275 requires the Secretary to "recognize to the maximum extent practicable" captive breeding as a means of protecting and conserving listed species. This emphasis on captive breeding ignores the NRC Report which concludes that captive breeding is not a substitute for conservation measures which address the threats to species in the wild (e.g. habitat destruction). Moreover, a recovery focus on captive breeding facilities is antithetical to our nation's proud heritage of protecting our wild and natural systems (e.g., our National Parks, Wilderness areas, and Wild & Scenic Rivers). Captive breeding should be a last resort and supplement to maintaining wild populations.

#### Habitat Protection

Species and their habitats are inextricably linked; they are but elements of a single ecological system. The Endangered Species Act encapsulates part of this wisdom in its explicit statement of purpose "to conserve the ecosystems upon which threatened and endangered species depend." In fact, since the first federal endangered species legislation, Congress has recognized the role of

conserving habitat. Over time, the legislative focus has evolved from regulating primarily the harvest and trade in species to greater emphasis on habitat. As the NRC Report explains, "[a]s our experience with endangerment and recovery has increased, habitat has become the central ingredient, and the ESA, in emphasizing habitat, reflects the current understanding of the crucial role habitat plays for species." In short, there is no scientific question that habitat protection is essential to conserving and recovering endangered and threatened species.

Nevertheless, at every turn, H.R. 2275 rashly eviscerates the existing law's protections of habitat. Most notably, in Title II the bill defines prohibited "harm" as only direct actions that actually kill or injure an individual member of a listed species. This definitional change overturns the U.S. Supreme Court's recent Sweet Home decision, thus lifting any restrictions against habitat modification or any other indirect action affecting listed species.

As a consequence of the redefinition of "harm," most of the Endangered Species Act's ability to protect habitat, particularly on non-federal lands would be lost. Unfortunately, the biological and physical requirements of endangered or threatened species do not vary according to the ownership of the habitats they occupy. In fact, fifty percent of occurrences of listed species are on private lands.

H.R. 2275 continues its attack on habitat protection by its redefinition of "critical habitat." Currently, the Endangered Species Act presumes that critical habitat by definition should be designated as such, unless it will not promote the conservation of the species. Title V of H.R. 2275 reverses this presumption. Non-federal lands must be excluded as well, unless the owner gives written permission or is compensated. Moreover, the bill's concept of "critical habitat," limited to the geographic area found to be occupied by a species at the time of listing, flies in the face of all scientific evidence.

Unsatisfied with the elimination of habitat protections on non-federal lands, H.R. 2275 proceeds to undermine protections on publicly owned lands as well. Under Title VI, the bill calls for the creation of the deceptively named "National Biological Diversity Reserve," which pays lip-service to the need to protect our biological diversity, but in actuality seriously reduces our ability to do so. Of all our public lands, the "Reserve" would be made up only of certain units within our National Parks, Wildlife Refuges, Wilderness Areas, and Wild and Scenic Rivers, but then only if management for biological diversity does not interfere with other activities which occur on them (e.g., hunting, fishing, grazing or mining). All other public lands (e.g., National Forests and BLM lands) would be used to protect biological diversity only if the Secretary makes a finding that the biological diversity to be protected is not substantially protected on any unit of the

Reserve.

Federal Agencies' Duties to Conserve and Consult

The Endangered Species Act currently mandates two important duties for all federal agencies with respect to endangered and threatened species. First, all federal agencies must utilize their authorities to promote listed species "conservation" -- defined to mean "use of all methods and procedures which are necessary" to bring any listed species to the point the Act's protections are no longer necessary. Second, all federal agencies must consult with the Secretary to ensure that no agency action is likely to jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.

Under Titles IV and V, H.R. 2275 turns these statutory mandates on their head. The bill limits the responsibility of federal agencies to utilize their authorities in furtherance of the Act's conservation purpose to those programs that are consistent with the agencies' "primary missions." Federal agencies would have no affirmative mandate other than to show that their activities are consistent with an applicable species conservation plan or objective.

Likewise, the bill does several things to render the agency consultation mandate virtually meaningless. It makes the decision to consult discretionary at the option of the agency proposing the

action. Exemptions are created if the proposed action is found to be consistent with a species conservation plan or objective, also a determination made by the acting agency rather than the Secretary. Destruction or adverse modifications to critical habitat would not trigger consultation unless such impact would jeopardize the continued existence of the species, which the bill defines as an action that "significantly diminishes the likelihood of survival of the species by significantly reducing the numbers or distribution of the entire species." This means the cumulative impacts of habitat destruction on the potential for species recovery overall or on particular populations could not be considered in determining jeopardy. Finally, even if an agency does choose to consult, severe time constraints are imposed, and if the deadline is not met, then by default the acting agency's duty to consult is deemed satisfied.

#### Prohibited Acts

In addition to defining "harm" so that habitat destruction would no longer be a violation (as discussed above), Title II of H.R. 2275 sets out to create other broad exemptions to the current Act's prohibitions and to debilitate its effective enforcement.

For instance, one proposed exemption, clearly aimed at appeasing the oil industry, shrimpers and other big-money interests, effectively eliminates protections for endangered and threatened marine species other than fish in U.S. waters (e.g.,



whales, sea turtles, seals, sea lions, manatees, sea otters, and seabirds).

The bill makes it exceedingly difficult for private citizens to enforce the Endangered Species Act through legal action in the courts. It narrows the range of cases for which citizen suits would be permitted, adds other substantive and procedural hurdles, and eliminates the award of attorney and expert witness fees, regardless of how meritorious the suit.

#### International Responsibilities

The Endangered Species Act does not work to protect just species indigenous to the United States. Teamed with the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Endangered Species Act is also crucial in preserving dwindling species populations throughout the world. CITES places international controls on importation, exportation and international commerce of imperiled species, and attempts to reduce the worldwide demand for such items. CITES has been instrumental in enabling the U.S. government and judicial system to join the fight in saving endangered wildlife and plants around the world.

H.R. 2275 is an affront to our nation's program of responsibility for the effect our actions have on imperiled species around the world. The bill abounds with restrictions on the ability of the U.S. to implement and enforce the CITES treaty. In

short, this bill gives foreign governments veto power over U.S. actions to protect foreign endangered and threatened species, eases the importation of foreign species by trophy hunters and exotic animal breeders, and even forces the U.S. to ignore its obligations under CITES and to actually violate the treaty. As if that were not enough, the bill sets up a bureaucratic nightmare that wraps U.S. enforcement efforts in costly red tape.

Just a few examples illustrate the scope of the obstacles put up by H.R. 2275. Under Title II, the bill requires that for every rule proposed, the federal government must show that compliance with the proposed rule is "reasonably within the means of the . . . range nation concerned." Thus, if a low-income, developing nation allowed exports to the United States of a species listed under CITES, the U.S. could not refuse its import -- just because the foreign country could not afford the scientific studies necessary to make the proper detriment finding required under CITES.

Another change would force the United States to grant import permits of foreign species, with no limitations on quantities, for purposes such as trophy hunting, unless the United States can prove that the detriment resulting from the taking outweighs the benefit derived. The United States would be required to publish for comment by the public and each affected foreign country (translated into the language of those countries) any regulation denying such

an import permit. In effect, the burden of proof is reversed giving the trophy hunter the benefit of the doubt, instead of the endangered or threatened species.

#### Incidental Take Permits

Another deeply troublesome alteration made by H.R. 2275 concerns incidental take permitting requirements. The Endangered Species Act now provides that a permit to "take" a listed species may be issued only if such taking is "incidental" to an otherwise lawful activity, and if the applicant submits a habitat conservation plan that meets all specified statutory and regulatory requirements. The habitat conservation planning process currently in vogue, however, is prone to controversy; habitat conservation plans constitute a compromise, and as such may not provide the best plan for protection and recovery of endangered and threatened species.

Unfortunately, H.R. 2275 just undermines the already imperfect habitat conservation planning process and even further relaxes the standards for issuing incidental take permits without doing anything to ensure the long-term sustainability of species habitat. Under Title II of the bill, new "species conservation plans" require only that the applicant take those steps that can reasonably and economically be taken to minimize the impacts on the species.

Similarly, Title I of H.R. 2275 introduces "cooperative management agreements" for States, local entities or non-federal persons that fall far short of providing the needed level of habitat protections, especially in that no protection can be afforded on private lands without the consent of the owner. Yet, the bill suspends the take prohibition for areas covered by such a cooperative management agreement.

#### Compensation Program

The Sierra Club heartily supports private property rights, a concept guaranteed by the U.S. Constitution. But under the guise of guarding property, the "takings compensation" provisions in H.R. 2275 hide another agenda: to dismantle and roll back another environmental law which some find undesirable. The broadly drawn provisions in Title I of this bill are irrevocably flawed. Generally, these provisions subvert the appropriations process and threaten budgetary limits; invoke illusory diminution of value percentages, open the door to payment for phantom losses, and generate a bureaucratic tangle that only big companies and their lawyers will be able to navigate. In short, H.R. 2275 would cost taxpayers millions of dollars worth of red-tape and compensation for supposed takings even where not constitutionally required.

#### RECOMMENDATIONS FOR TRUE REFORM

H.R. 2275 is not responsible reform of the Endangered Species Act. The bill is not grounded in sound science, it does not

promote responsible conservation policy, nor does it improve implementation of the Act with respect to effective reduction of short-term "socioeconomic" impacts. If enacted, it would be a lose-lose result for the American people.

That is not to say that the Endangered Species Act should not be improved. Indeed, the Act, and how it is implemented, needs improvement in several areas. Responsible reform is needed to improve the law's ability to achieve its intended purpose, both by removing factors that prevent full and proper implementation, and by adding greater incentives for conserving species and their habitats.

For the Endangered Species Act to be more effective, the Sierra Club advocates that the following measures be adopted:

\* **Ecosystem Protection:** the Endangered Species Act should pursue a proactive, ecosystem approach to species and habitat conservation. Existing proactive mandates, such as Section 5 of the Act, should be fully implemented. Further express authority should be given to protect endangered ecosystems. Proactive conservation of viable ecosystems and multispecies protection programs promote recovery of listed species, as well as prevent declines of candidate and other species, including vertebrates, invertebrates, and plants. Properly implemented, an ecosystem approach can also reduce uncertainty and thus reduce economic disruption.

\* Prevention: the Endangered Species Act should expressly authorize programs aimed at preventing species from ever declining to the point where they need to be listed under the Act. Such a preventive approach would be economically cost effective and biologically sound, and designed to minimize intrusions on, and costs to, private landowners. A preventative program should focus on key ecosystems and multispecies protections.

\* Recovery: the Endangered Species Act should set out specific timelines for completion of recovery plans, and require that the recovery plans (i) establish recovery targets based on the best available science, (ii) identify specific actions needed to achieve recovery, and (iii) contain deadlines for carrying out the recovery actions.

\* Habitat Conservation Plans: The Sierra Club supports Habitat Conservation Plans that will prevent species extinctions; provide long-term habitat protection of adequate size and quality to maintain the biological diversity of the area; and provide adequate funding and other resources to maintain, enhance, restore/rehabilitate, and monitor the habitat over time. Habitat Conservation Plans should be based on sufficient scientifically valid biological information; for this reason, recovery plans should be in place before a habitat conservation plan can be approved. Habitat monitoring should be required by federal and state agencies to ensure that the purposes of the Habitat Conservation Plan are being carried out on an ongoing basis. Enforcement and severe sanctions should be maintained to prevent

degradation of the habitat area in violation of Habitat Conservation Plan goals.

\* Plant Protections: the Endangered Species Act should extend protections for endangered and threatened plant species beyond federal lands.

\* Technical and Informational Assistance: the Endangered Species Act should direct the U.S. Fish and Wildlife Service to establish programs to provide greater information, advice and technical assistance to private landowners attempting to comply with the Act.

\* Incentives: the Endangered Species Act should minimize the disincentives and create greater positive incentives to promote species and habitat conservation, especially for smaller landowners. Such programs should embrace the elimination of government programs that serve as disincentives to conservation and actually promote the further degradation or loss of habitat for endangered and threatened species. Examples include below cost timber sales and subsidized grazing fees on public lands that may be better suited for other uses such as conservation areas for listed species habitat.

Positive incentives should be offered as well, including tax credits to landowners for habitat maintenance or improvement on a long-term basis. Such tax credit programs should establish standards to set priorities for which lands qualify. Lands that provide for the conservation of multiple species or natural communities should be given higher priority than land that provides

limited habitat for a single listed species, for example.

\* Deadlines: deadlines need to be established for recovery planning, designation of critical habitat along with interim protections, and for the development of a conservation program as called for in Section 5 of the Act.

\* Adequate Funding: perhaps most importantly, adequate funding is needed for proper and full implementation of the Act, including listing and prelisting activities, recovery programs, assistance to states, habitat acquisition, and technical assistance to landowners.

#### CONCLUSION

The Endangered Species Act is but one of a number of important national laws that mandate the conservation of our natural heritage and strategic resources. It does not and cannot work alone to save America's wildlife, but it is the strong and final word regarding our decision to preserve the riches of the nation's biological diversity.

H.R. 2275 is an irresponsible and extreme departure from this nation's commitment to conserve and recover endangered and threatened species. The Sierra Club urges this Committee and the House to oppose this measure, which in effect repeals the fundamental protections afforded by the Endangered Species Act. Rather, the lessons learned about science, politics, and economics, and the interplay among them, since the original Act was enacted



should be applied in fine-tuning and reauthorizing a strong Endangered Species Act.



**STATEMENT OF GINETTE HEMLEY**  
**Director of International Wildlife Policy**  
**WORLD WILDLIFE FUND**  
**For the Record**  
**House Committee on Resources**

on

**THE ENDANGERED SPECIES ACT, THE CONVENTION ON INTERNATIONAL  
 TRADE IN ENDANGERED SPECIES (CITES), and H.R. 2275, THE ENDANGERED  
 SPECIES CONSERVATION AND MANAGEMENT ACT OF 1995**  
 September 20, 1995

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Mr. Chairman, I appreciate the opportunity to submit this statement on behalf of World Wildlife Fund. WWF is the largest private conservation organization working internationally to protect wildlife and wildlife habitats. We are currently supporting conservation efforts in more than 70 countries. WWF has also worked extensively with the Convention on International Trade in Endangered Species (CITES) since the treaty's inception, and provides both technical and financial support to member nations and their CITES programs.

Questions over the Endangered Species Act and its relationship to CITES and international commerce in threatened species currently loom large. I would like to briefly summarize the key issues as WWF sees them.

First, we appreciate the opportunity to hear some of the concerns voiced by other nations over the Endangered Species Act and U.S. implementation of CITES. WWF recognizes that Zambia, Zimbabwe, and South Africa in particular have been pioneers in wildlife management and conservation, relying in part on wildlife use to provide important income in rural areas, particularly through controlled sport hunting. We recognize the value of these programs and have actively supported them. In looking at the complex problems of the international wildlife trade, if all we had to worry about was resolving the issues in southern Africa, our task would be relatively easy. WWF appreciates the need to make sure that effective conservation programs are not undermined by excessive U.S. regulation.

But the international wildlife trade, and all of its associated problems and threats to species, is much broader than just southern Africa. In addressing the concerns of these particular countries, we must not undermine the important conservation benefits the Endangered Species Act provides for endangered and threatened species in other parts of the world.

**World Wildlife Fund**

1250 Twenty-Fourth St., NW Washington, DC 20037-1175 USA

Tel: (202) 293-4800 Telex: 64505 PANDA FAX: (202) 293-9211

*Incorporating The Conservation Foundation. Affiliated with World Wide Fund for Nature.*



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The robust market forces of our vast economy here in the United States, the largest wildlife market in the world, have wreaked havoc for many foreign species through uncontrolled trade in the recent past, from large mammals to exotic birds to reptiles and other wildlife forms with commercial value. We know how the wildlife trade works. It often occurs in sudden cycles, trends can change very quickly, and species that are naturally rare or vulnerable to overexploitation can experience rapid demise. Many countries in Latin America, Asia, and parts of Africa have enacted very strict wildlife export laws as a result of these trade threats, many the result of U.S. demand.

The ESA's broad enforcement authority and commerce restrictions have in fact helped many of these countries enforce their own wildlife protection laws by providing an important safeguard against illegal and detrimental trade. The ESA helps provide the teeth needed to make CITES work.

The law enforcement record of the Fish and Wildlife Service shows ample evidence of the benefits to foreign countries of ESA actions affecting species that slip through their own protection barriers. Recently, after a 15-month investigation, enforcement agents in New York apprehended an individual for transporting and selling illegally imported skins from critically endangered snow leopard, in violation of the ESA. Although the species is also covered by the strictest protection of CITES and is prohibited from export in all of its native Asian countries, it was the interstate commerce restrictions of the ESA that allowed for this smuggling ring to be broken up.

The Endangered Species Act provides for trade control measures that go beyond CITES, but this is explicitly allowed for in the Convention. It is in fact the normal practice of most trading countries, including other major markets like many European Union nations. A number of countries have gone well beyond the mandate of CITES by prohibiting most wildlife imports and exports. The U.S. has, in our view, struck an appropriate balance. The Endangered Species Act is strong, but it is also flexible.

I should also point out that the vast majority of the more than \$1 billion wildlife trade in the United States is not subject to specific restrictions of either the ESA or CITES; the trade as a whole is largely unregulated. Only a very small portion of the commerce -- less than 5% -- involves species listed by the ESA.

The concerns that have recently arisen about the ESA's international provisions relate, in our view, to administrative matters associated with just a handful of species, specifically the African elephant, the Nile crocodile, and perhaps one or two others -- principally species important in sport hunting. Some have argued that the ESA has unduly restricted trade in these species. But let's look at the facts. U.S. rules are less strict than those of many other countries for import of species listed under Appendix I of CITES, the treaty's strictest protection. For example, we currently issue import permits for more elephant and leopard hunting trophies than any other nation in the world. Under special ESA allowances, at least 200 elephant trophies were legally imported in the last two years from at least eight African countries, primarily Zimbabwe. A similar ESA rule for leopard has allowed at least 600 leopard trophies to be imported in the last two years.

These special rules demonstrate the Endangered Species Act's flexibility. They allow the import of certain threatened species when such trade serves conservation purposes, while at the same time maintaining safeguards against detrimental trade. It is important to remember that wildlife trade control capabilities vary enormously among countries, and these differences are not always addressed through the CITES process. There is little question that most southern African countries have effective programs. But I can tell you that the situation is very different in west and central Africa, for example, according to CITES reviews and infractions reports.

In sum, we believe that the Endangered Species Act is appropriately flexible to implement the requirements of CITES as well as to provide for additional trade measures where they are needed. There is, in our view, no need to change the Act.

At the same time, implementation of the Endangered Species Act and its CITES measures, including its accommodation of the conservation needs and some foreign countries and species, could and should be improved. This goal could be partly achieved in two ways. First, we recommend that the U.S. government make harmonizing the CITES and ESA lists a priority, to follow more closely the international standards set by the convention. Second, we recommend that the U.S. incorporate broad and regular consultations with foreign countries as an overarching policy for all activities affecting foreign species under our laws. This will ensure a better understanding of the specific conservation needs of other countries, especially where their success may partly depend on access to U.S. markets. Neither of these actions require any changes in the Endangered Species Act itself, and neither would or should in any way diminish the United States' ability to take stricter measures when conservation calls for it. They may require an adjustment of priorities at the Fish and Wildlife Service because of tight budgets and staffing, but we strongly urge them to be addressed.

These changes in implementation would substantially improve species conservation at home and abroad by strengthening partnerships between the U.S. and the range states. The Endangered Species Conservation and Management Act of 1995 (H.R. 2275), in contrast, would virtually abandon this country's traditional leadership role in international species conservation. The international illegal wildlife trade is valued at more than \$3 billion -- and that is conservative. The United States must maintain the authority to act under its own laws to protect imperiled wildlife from the ravages of uncontrolled and illegal trade. This is equally true for species outside the protective umbrella of CITES, and those for which CITES protection is not enough, like the critically endangered tiger. H.R. 2275 would undermine that authority.

For example, H.R. 2275 provides that prohibitions on the importation of threatened species shall not apply to hunting trophies so long as they are taken in accordance with the laws of the exporting country. This provision would prevent the Secretary of the Interior from curbing imports of threatened species no matter what his concerns about the impact of hunting on the welfare of those species. It assumes that because a country has a law regulating the take and trade of a species, that such a law is well enforced and that such activities pose no harm to the species in question. One has only to look at the last 20 years of illegal wildlife trade and CITES infractions to appreciate that reliance on foreign laws is not enough to protect species at risk; our own law must be strong as well.

H.R. 2275 would also limit the time that the U.S. Fish and Wildlife Service has to identify specimens seized as suspected contraband to 30 days. In a recent case, FWS successfully prosecuted a smuggler attempting to bring 58 endangered species bones into this country. It took the Service six weeks to identify the bones as Siberian tiger. If H.R. 2275 had been law at the time, FWS would have been forced to return to the smuggler his illegal cargo, and send him on his way.

H.R. 2275 would abdicate the leadership role of the U.S. by requiring the written consent of all relevant foreign governments before placing a foreign species on the endangered or threatened species list, or promulgating a regulation for the protection of a threatened species. Only an order from the President could override the veto of a foreign government. Imagine if a species such as the tiger suddenly became endangered today, and the Secretary had to urgently confront the issue. To list this critically endangered animal under H.R. 2275 would require the permission of Russia, China, Indonesia, Vietnam, Laos, Cambodia, Burma, Thailand, India, Nepal, Bhutan, and Bangladesh. If the Secretary proposed to downlist or uplist the argali sheep, he would be required to seek the consent of China, Russia, Afghanistan, India, Kazakhstan, Kyrgystan, Mongolia, Nepal, Pakistan, Tajikistan, and Uzbekistan. As mentioned above, changes in wildlife trade patterns often occur rapidly as a result of shifting market forces, and it is imperative that the United States not have to wait for permission to make common sense listings of endangered species under U.S. law.

Finally, H.R. 2275 creates a "rebuttable presumption" that sport hunting allowed by the laws of the range state is beneficial to the conservation of the species. Thus, if a range state allowed hunting of critically endangered tigers, the ESA would no longer provide a flat prohibition on the importation of tiger trophies. Rather, the Secretary would be required to promulgate a special regulation, rebutting the presumption, and submit the regulation for comment to the range states. While sport hunting can be a form of wildlife use that provides overall conservation benefits to species, the ability of countries to manage such programs effectively varies enormously. Again, while we believe strongly in the need to consult with range states on listing and conservation issues, federal law should not unnecessarily tie the Secretary's hands as this bill would do.

WWF is committed to working with the range states, Congress, and the Administration to ensure that this country's conservation efforts do not infringe on the sovereignty, economic opportunities, or conservation efforts of foreign nations. This can be accomplished, however, by measures that do not back away from our nation's commitment in global species conservation.

Thank you for allowing us to share our views.

CONSEIL INTERNATIONAL DE LA CHASSE  
ET DE LA CONSERVATION DU GIBIER

INTERNATIONAL COUNCIL FOR GAME  
AND WILDLIFE CONSERVATION



COMMISSION DU GIBIER TROPICAL

(TROPICAL GAME COMMISSION)

LE PRÉSIDENT

TO WHOM IT MAY CONCERN

**Subject : Impact of the US Endangered Species legislation due to import restrictions of hunting trophies legally obtained abroad by American sportsmen**

It is appropriate to recall on this occasion a number of important facts : American big game hunters make up approximately 50% of all hunting tourists worldwide and that harvesting of hunting trophies is negligible in quantity (a fraction of 1%) of any species.

The « trade » of legally-obtained hunting trophies has, since the very 2nd Conference of the Parties of CITES in 1979, been recognized (Res. Conf. 2.11) as a non-commercial activity to be authorized by the Parties. This Resolution was reinforced by COP 4 in 1983 (Res. Conf. 4.13), regarding particularly leopard trophies and reconfirmed by following COPs (Res. Conf. 5.13, Conf. 6.9, Conf. 7.7, Conf. 8.10). Similarly, a hunting trophy quota were attributed by the Parties for other Appendix I species, such as the cheetah, as well as for the Nile crocodile.

The 9th Conference of the Parties which met in Fort Lauderdale, Florida, in November 1994, the Parties studied documents Doc. 9.50, 9.51 and Com. 9.21 by the Government of Namibia which insisted on the fact that arbitrary import ban of legally-obtained hunting trophies constituted in fact a violation of both the text and the spirit of the Convention. It was stressed that these import bans were usually imposed on the basis of sketchy scientific data and without the recognized procedure of consultation with the countries of origin.

The Conference, which was regrouping 117 State Parties and 7 non-Parties, adopted the proposals of Namibia which in fact requests the Scientific Authority of the importing country to merely check with the Scientific Authority of the country of origin that the trophy was obtained legally in that country. An amendment was introduced and adopted stating that the only exception to this rule could be made when scientific or management data existed, demonstrating that the decision of the country of origin should in fact be challenged.

It was stressed by exporting countries during the discussions in Fort Lauderdale that the unjustified interpretation of Article XIV of the Convention, which in particular has been repeatedly invoked by the US CITES Scientific Authority, had « *compromised the conservation programs of Range States* ».

This reality has been strongly highlighted by IUCN (The World Conservation Union), TRAFFIC and WWF in their January 1995 Report entitled : « *Four years after the CITES ban: illegal killing of elephants, ivory trade and stockpiles* » which « *concludes that the*

9, Quai Malaquais, 75006 PARIS (FRANCE)  
Telex : IGF 640430 F - Téléfax : 45 63 32 94

*international ivory trade ban has not halted the illegal offtake of elephants. The continued loss of elephants appears to be the result of an inability on the part of range states to protect them* ». In fact, this report gives dramatic evidence of the effect of the ivory trade ban on anti-poaching budgets in the elephant's range states :

- « *since 1988, budgets for law enforcement activities in Zimbabwe's wildlife sector have declined by almost 90% in real terms* ».
- *In Tanzania, « for the protected areas included in our analysis, budgets had declined by 97% since the ban came into effect ... With the decline in available funding, illegal killing has begun to increase since 1992 ».*
- « *Zambia has experienced a 96% erosion in its budget for capital expenditure in the wildlife sector* ».

All of the above information confirm the two obvious facts that poaching can only be checked by anti-poaching efforts and that these efforts cost money which, in reality, can only be produced by wise use of the wildlife resources. International aid which had been promised to African elephant range states did not materialize in any significant way and, in any case, can never be considered by donors as an ongoing long term financing of recurrent law enforcement costs.

The value of wildlife and the contribution by sportsmen to conservation funding are indeed well known by the US Fish and Wildlife Service and by the International Association of Fish and Wildlife Agencies. It is all the more shocking to see that same US F&WS apply arbitrary import restrictions on trophies originating in developing countries who desperately need the income in order to carry out their brave campaigns to conserve wildlife.

CITES furthermore recognized at its meeting in Kyoto the contribution that trade can make towards conservation of endangered species.

It is for this reason that the International Council for Game and Wildlife Conservation (CIC) voted at its 42nd General Assembly, meeting in Monaco, April 4 to 7, 1995, the two attached Recommendations :

It is our sincerest wish that, in its current reform of the Endangered Species legislation, the United States will fully take into account the benefits of legal trophy hunting and trade in wildlife products towards the conservation of wild species and its habitats, thereby ensuring the two great goals identified by the World Summit in Rio (1992), which are the conservation of biodiversity in conjunction with sustainable development.



Bertrand des CLERS  
Chairman

19/07/95



CONSEIL INTERNATIONAL DE LA CHASSE  
ET DE LA CONSERVATION DU GIBIER  
INTERNATIONAL COUNCIL FOR GAME  
AND WILDLIFE CONSERVATION

42nd GENERAL ASSEMBLY OF THE C.I.C.  
MONACO - APRIL 4th/7th 1995

GT.GG/RI

RECOMMENDATION

INFORMED of the unanimous adoption by the more than 125 member CITES Treaty, during the recent Conference of the Parties in Fort Lauderdale, USA (November 1994) of a resolution recognizing formally the right of Range States to export the quotas of Appendix I species approved by the Conference,

RECALLING that this Resolution reaffirms the basic notion explicitly recognized in the preamble of the Convention that : *« peoples and States are and should be the best protectors of their own wild fauna and flora »*,

NOTING however that, since Article XIV, para. 1 of the Convention states that : *« stricter domestic measures »* may be taken by Parties, some Parties have been enacting national regulations which restrict wildlife imports according to their own domestic criteria, thereby causing severe prejudice to exporting range states,

RECALLING that past Conferences of the Parties have insisted on the necessity for importing states to consult with range states before suggesting or taking any restrictive trade measures, rather than dictating their own view,

UNDERLINING the fact that CITES is a Convention on International Trade and therefore must be in harmony with other international trade agreements,

THE INTERNATIONAL COUNCIL FOR GAME  
AND WILDLIFE CONSERVATION,  
on proposal of the Tropical and Big Game Commissions,

URGES the Standing Committee of CITES to identify, within the framework of the general review of the effectiveness of the Treaty which it is carrying out, which countries apply such unilateral import trade restrictions under Article XIV, para. 1, thus denying Range States the sorely needed benefits for conservation which can derive from international trade of sustainably managed species, as recognized by the Conference of the Parties in Resolution 8.3 passed in Kyoto, 1992,

ASKS to IUCN's Director General to help voice this concern in the course of IUCN's advisory role to CITES and help convince importing States to abandon unilateral trade bans in violation of CITES Recommendations,

URGES FURTHER that this item be put on the agenda of the next meeting (10th COP) and that the interpretation of Article XIV, para. 1, be only utilized by Parties if it is in accordance with Article XIV, para. 2,

AWARE that the European Union has been applying for ten years a Regulation (Ref. 3626/82) for international trade in wild fauna which effectively curtails the import of some CITES Appendix II species by putting in place a procedure which submits them to Appendix I restrictions and to an eventual arbitrary import veto,

AWARE FURTHERMORE that the European Commission is in the process of redrafting this European Council Regulation,

ASKS the European Union to ensure that European regulations, meant to implement CITES, do not contravene Europe's general obligations on free trade, as specified by Article XIV, para. 2 of the Convention.





CONSEIL INTERNATIONAL DE LA CHASSE  
ET DE LA CONSERVATION DU GIBIER  
INTERNATIONAL COUNCIL FOR GAME  
AND WILDLIFE CONSERVATION

GT/R3

42nd GENERAL ASSEMBLY OF THE C.I.C.  
MONACO - APRIL 4th/7th, 1995

RECOMMENDATION

REMINDING that, in some Southern African countries, over-abundant elephant populations must be culled in order to ensure the long-term conservation of National Parks and of their biodiversity.

RECOGNIZING however the sovereign right of some range states to continue to ban export of elephant products

RECALLING that, at their 7th Conference in 1989, a majority of States Parties to CITES decided to impose a generalized ban on international trade in all African elephant products, arguing that the closing of legitimate trade would automatically result in bringing illegal trade to a halt.

INFORMED of the findings of the World Conservation Union's African Elephant Specialist Group, published in January 1995 by IUCN, Traffic and WWF, which conclude that, after five years' ban, elephant poaching and illegal ivory trade continue as before, demonstrating the fallacy of the argument.

NOTING that, according to the above report, the predictable shortfall in revenue of Conservation Departments, resulting from the impossibility to sell government-owned elephant ivory and skins, has had the perverse effect to force important reductions in range States' anti-poaching budgets (by 90% in the case of Zimbabwe).

The International Council for Game and Wildlife Conservation,  
at the suggestion of the Tropical Game Commission,

REITERATES the recommendation made by the last General Assembly of CIC meeting in Capetown in March 1994 to the CITES Parties, Secretariat and Standing Committee.

HIGHLIGHTS once again the critical importance of encouraging sustainable legal trade in wildlife products in order to pay for recurrent costs of anti-poaching and other law-enforcement and wildlife management activities in tropical countries.

RECOGNIZES the necessity to compensate local people for the cost of conserving natural habitats and the presence of wildlife on their land by letting them benefit from the trade in this products.

WELCOMES the offer made by the United Nations Environment Program to find ways to reauthorize controlled legal trade in African elephant products originating from range states where elephants are managed sustainably and where unworked elephant product inventories emanate from government warehouses.



## Congressional Sportsmen's Foundation

### STATEMENT OF THE CONGRESSIONAL SPORTSMEN'S FOUNDATION FAVORING REVISION OF THE FOREIGN ASPECTS OF THE ENDANGERED SPECIES ACT

House Committee on Resources  
September 20, 1995

The Congressional Sportsmen's Foundation appreciates the opportunity to express its views regarding the effect of the Endangered Species Act on conservation efforts of foreign nations. We support selective harvesting of wildlife as a sound management practice and as an important revenue source for management needs. In fact, the Pittman-Robertson Act, supported with revenue from hunters, has been the cornerstone of healthy and abundant populations of game species throughout the country since 1937. Legal hunting and the revenue produced from it have kept many game species off the Endangered Species threatened and endangered lists. It has been a wise and profitable investment by the hunting community to conserve our valuable game species and critical habitat. The Endangered Species Act should encourage this type of conservation both at home and abroad.

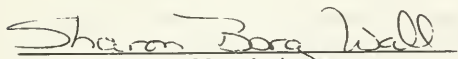
For developing countries to lift their citizens out of poverty while maintaining native wildlife species, well-regulated and profitable tourist hunting programs are of the utmost importance. The Endangered Species Act, however, limits the ability of the U.S. Fish & Wildlife Service to issue permits for the importation of trophies taken in many range nations. Such limitations discourage American tourist hunter participation in authorized hunts, which results in reduced revenues for range nation conservation efforts. Deprived of the ability to encourage their countrymen to protect their valuable indigenous species for strong economic gains, range nations cannot hope to stop poaching for either subsistence living or, more devastatingly, for the world black market. It is precisely this manacle that has caused dramatic declines of previously unthreatened species in countries of the African continent.

1730 K Street, NW, Suite 1300, Washington, DC 20006  
Telephone (202)785-9153 Fax (202)785-9155

Developing countries, which are home to thousands of the world's wild species, need to have as many options as possible for improving the condition of their human populations while implementing prudent conservation measures to ensure the survival of their wildlife and habitat treasures. Where governments are able to encourage conservation by returning a portion of tourist hunting dollars to local villages, these governments have been able to halt poaching. When village elders understand that their communities can reap the rewards of better medical care and better education for their children when they protect their resources and regulate their harvest, they are able to involve their people in conservation efforts. Economic incentives do work. In many cases in range nations they are the only effective conservation tool.

We have had a number of years to understand the good and bad effects of the Endangered Species Act. The good provisions must be retained and strengthened. On the other hand, those provisions that have had a detrimental effect on our efforts at wildlife conservation need to be re-examined and replaced. Permitting the importation of animals harvested abroad by American tourist hunters will allow range nations to create incentives for wildlife conservation that will work.

If the Endangered Species Act cannot be amended to require our government agents to recognize the unique circumstances of range nations and their needs with regard to conservation measures, perhaps it should be amended to remove the foreign aspects and place them squarely within the realm of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where regulated trade in wildlife is recognized as key to thriving populations of the world's wild species.

  
Sharon Borg Wall, Chairperson  
Congressional Sportsmen's Foundation



*Game Conservation International*

*P.O. Box 17444  
San Antonio, Texas 78217 U.S.A.  
210/824-7509  
Fax: 210/829-1355*

Lawrence C. Means  
Executive Director

July 10, 1995

Mr. John J. Jackson, III  
One Lakeway Center, Suite 1380  
3900 N. Causeway Blvd.  
Metairie, LA 70002

STATEMENT OF GAME COIN  
IN FAVOR OF REFORM OF THE FOREIGN ASPECTS  
OF THE ESA

Game Conservation International has supported wildlife conservation and protection of threatened species since its founding nearly 30 years ago. Our efforts include funding of nearly \$1 million toward translocation of endangered African black rhinos, anti-poaching initiatives in Africa and North America and support of the Siberian Tiger Preserve research and protection programs in Russia.

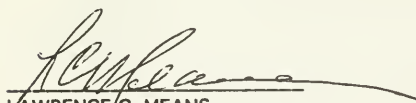
GAME COIN, (our acronym) holds special concerns which suggest the need for reform of the foreign aspects of the Endangered Species Act.

The ESA actually harms some foreign species, particularly those that would otherwise have a "game animal" status. The problem is inherent in the Act. It interferes or disrupts range nation programs, and yet it bestows no benefits. The benefits we are accustomed to with domestic species don't exist in the instance of foreign species. Domestic species benefit from critical habitat designation, cooperative arrangements, recovery programs and funding. These benefits don't exist in the case of foreign species. It is important to understand this to appreciate the fact that the Act is more detrimental than beneficial to foreign species. Instead of bestowing benefits, it actually obstructs and interferes with range nation programs, frequently over the objection of the range states, range nation authorities are helpless to protect themselves against low level agency personnel that administer these things in the U.S.A.

We should not interfere with range nation programs, particularly low volume, low risk, high revenue producing tourist hunting, without offering a viable and acceptable substitute. It is one consideration if the range nations ask for our help, which we are not able to give anyway. It is another when we show no regard for their programs and interfere with them.

We must reform this act to facilitate the importation of tourist hunting trophies when they are a component part of a range nation conservation program. ESA's severe restrictions on importation of trophies have cost range nations hundreds of millions of dollars, revenues which could support local villages, anti-poaching and game warden efforts.

Thank you for this opportunity to make a statement, and for reforming the Act to address these very important issues.



LAWRENCE C. MEANS  
Executive Director

# Foundation for North American Wild Sheep

720 ALLEN AVENUE • CODY, WYOMING 82414-3402 • PHONE (307) 527-6261 • FAX (307) 527-7117

## OFFICERS AND DIRECTORS

### Officers

#### President

2028 East Washington  
Phoenix, AZ 85034  
(602) 275-7666 (H)  
(602) 843-8749 (H)

#### Leland Sprakes, Jr.

*First Vice-President*  
P.O. Box 1675  
Cleveland MS 38732  
(601) 843-2751 (H)  
(601) 843-2015 (H)  
(601) 843-3991 (FAX)

#### Jeff Reynolds

*Second Vice-President*  
P.O. Box 146  
Douglas, WY 82633  
(307) 458-3693 (H)  
(307) 558-1262 (FAX)

#### Duncan Gilchrist

*Secretary*  
P.O. Box 698  
Corvallis, MT 59828  
(406) 961-4114

#### Phyllis Carlson

*Treasurer*  
7185 132nd St. West  
App. Bldg. MN 55124  
(612) 444-8878 (H/FAX)

#### Garry Vince

*Past President*  
P.O. Box 2468  
Fort St. John BC  
CANADA V1J 4H9  
(604) 785-0596 (H)  
(604) 787-1594 (FAX)

#### Mike Baumann

6126 W. 64th Avenue  
Arvada, CO 80003-4910  
(303) 421-4607

#### Daniel A. Pedrotti

581 N. Shoreline Blvd  
Suite 8240  
Carpus Christi, TN 37401  
(512) 884-2443 (H)  
(512) 991-6642 (H)  
(512) 884-1850 (FAX)

#### Ted Schutte

5554 190th St  
Sibley, IA 51249  
(712) 754-3729 (H)  
(712) 754-2904 (FAX)

#### Don Schmalz

P.O. Box 664  
Cody, WY 82414  
(307) 587-9259 (H)

#### Rince "Woods" Wood

9540 W. Red Coast Ave  
Las Vegas, NV 89129  
(702) 645-6941 (H)  
(702) 6070148  
(702) 78694 (FAX)

#### Karen Werbelow

*Executive Director*

## STATEMENT OF THE FOUNDATION FOR NORTH AMERICAN WILD SHEEP IN FAVOR OF REFORM OF THE FOREIGN ASPECTS OF THE ENDANGERED SPECIES ACT

The Endangered Species Act has a history of harming foreign species by obstructing foreign range national conservation programs. An example very dear to this organization is the listing as endangered and threatened of the argali sheep in China and in the CIS.

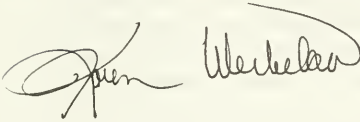
Like many other foreign species, the sheep was listed not because its status was known, not because it was known to be endangered or threatened, but out of ignorance or the so-called "precautionary principle." It was listed because its territory was so vast and it existed in so many different populations that its real status wasn't known to agency bureaucrats in Washington, D.C. They listed it until the foreign range nations could do the impossible: establish what its population was and its status, which would be prohibitively expensive. The consequences were that the range nation conservation programs that were dependent upon tourist hunting dollars, and the anti-poaching effect inherent in having the hunter present and giving the wildlife value in the field came to an abrupt end. Argali that were worth fifty times that of a domestic sheep as tourist hunting trophies taken under license in a regulated hunt suddenly were converted to being fifty times less valuable, and were the first to be eaten or eliminated from the field. It was not only improper to list the species as endangered and threatened, the listing of it obstructed programs over range nations conservation authorities objection. There was no high volume commercial trade or illegal activity. There were approximately 125 trophies a year from all of its' habitat.

CITES is a more appropriate instrument for governing the importation and exportation of foreign species. There seems to be little alternative but to take agency personnel out of the equation. The importation of trophies of threatened game animals should be exempted completely when it is a component part of the range nation program, which means when it is lawfully taken under license. It is fundamentally unsound to have agency personnel in the U.S. imposing restrictions and costs that constitute taxes on these poor range nations. There must be at least a presumption in favor of those imports. An endangered species should be allowed to be imported when it is a component part of a range nation program, particularly when it is sanctioned by CITES. Tourist hunting is a fundamental conservation tool that gives wildlife a "game animal" status. It is very low in risk because it is very low in volume, and it's select. It is an ideal conservation tool in remote locations where wildlife has little or no other chance. It generates revenue, local incentive, and helps quell poaching.

Listing of the argali has actually harmed the species because of its impact upon the importation of the trophies that tourist hunting-base conservation programs are completely dependent upon. The anti-hunters have argued that even threatened argali should not be allowed to be imported based upon the wolf and grizzly bear decisions of our courts. This should have been stopped long ago, because we can't replace the benefits that we are interfering with. We must exempt trophy imports from restriction. Tourist hunting is an exceptional category of sustainable use that gives remote wildlife a "game animal status". We have no right to stop it when there is no adequate substitute for its presence and potential beneficial effects. We have been embarrassed about the U.S.'s lack of knowledge and meddling, but that's outweighed by our concern for the welfare of the species that we care so dearly about. Tourist hunting is a conservation tool and when you tax it, eliminate it, or interfere with it, you are reducing the benefits to the species. The U.S. is in no position to substitute its judgement in the fields of foreign lands for that of the range nation authorities. It is a documented failure. The ESA must be reformed to exempt tourist hunting since it is a licensed, regulated, component part of the range nation programs.

The Foundation for North American Wild Sheep is a leader among wildlife conservation organizations. Our commitment to the wild sheep of North American is without comparison. Over 13 million dollars has been generated for wild sheep conservation programs in the United States, Canada, and Mexico. The programs not only benefit wild sheep, but all wildlife.

We thank you for the opportunity to make this statement. We hope that our experience in wildlife management will help you in addressing the issue of reforming the Endangered Species Act.

A handwritten signature in black ink, appearing to read 'Karen Werbelow', written in a cursive style.

Karen Werbelow  
Executive Director

STATEMENT OF  
LEVY (RAMS) RAMMUTLA  
IN FAVOR OF REFORM OF THE FOREIGN ASPECTS  
OF THE ENDANGERED SPECIES ACT

My name is Levy (Rams) Rammutla, I am the Director of Marketing and Communications with the National Parks Board of South Africa. Additionally, I am the former Director of the Botphuthatswana National Parks Board. During my tenure as Bops Parks Director, I was intimately involved in the effects of the U.S. Endangered Species Act upon conservation and the sustained management of a national parkland in South Africa.

The United States Endangered Species Act is a small but significant portion of the debate around the political, social, economic and environmental resource relationships that exist between the "rich North" and the "poor South".

The ESA is a product of the so-called "No Go" (protection) philosophy on dealing with the issues of environmental degradation and natural resource depletion. This general approach is prevalent in the developed countries (rich North) of the world who have already experienced or are experiencing the immense social and economic costs of an accumulated environmental debt.

In contrast to this approach is the "wise use" (sustainable use) philosophy on dealing with these issues. The "wise use" approach is generally supported by the developing countries (poor south). It is the difference in these two approaches that creates an apparent conflict or the policies of one country having negative impact in terms of the success or policies of another.

In order to make nature and species conservation work in any society, the society as a whole has to place a value on it. That value often comes at a high cost. In a developing country with extreme poverty, low food security, high illiteracy, poor health services, high unemployment, etc. such as South Africa, other value concepts such as aesthetic, intrinsic, extrinsic existence, opportunity



costs, long term sustainability, animal rights or other "esoteric" values do not enjoy a place of high priority in such as society. In this context, issues such as: where the next meal will be coming from: whether there is a roof overhead, and whether there will be an opportunity for a job tomorrow; carries far more weight. The country's policy with respect to nature and species conservation has to be placed within the context of societies priorities, needs, aspirations and hopes. For this reason the "wise use" approach is the favored alternative in developing countries.

In addition to this, nature and species conservation efforts in South Africa are viewed negatively. This negative perception is a legacy of the apartheid era, where the majority of people saw the nature conservation areas as elitist "whites only" areas which were created by forcibly removing the black inhabitants. Therefore, the conservation efforts are under extreme pressure to implement politics which demonstrate visible and tangible benefit to the public and in particular to communities which neighbor conservation protected areas.

To specifically focus on the impact of the ESA. The restrictions imposed by the U.S. ESA is to limit the opportunity for South Africa and her people of all colors to use its endangered species resources wisely and sustainably. Such use, can achieve both the objective of conserving endangered species and stimulate economic growth in the usually economically deprive, regions surrounding protected areas.

Consider the implications of the following statements:

But for the U.S. ESA, the United States would be a potentially rich market for the sustainable use of South Africa's wildlife;

Internationally "endangered species" are common locally and in some cases have to be culled or reallocated to ensure local ecosystem integrity (viz. Rhino and elephant debate);

Ecological culling or reallocation program operations to keep animal numbers regulated cost the "South African tax payer" money to achieve an international objective of low local priority;

Local overabundance of endangered species present a major economic opportunity, unless international restrictions like the ESA prevent that use then they become a cost;

Without commitment from society to conservation in South Africa, all conservation efforts will fail. Further enforcement or expanding the international endangered species lists and schedules as they are enforced by the U.S. will result in negative impacts on the species.

Protected areas that produce values but are not valued by the adjacent local communities are under threat. Firstly, those communities have a strong demand for land under a rapidly expanding population. Secondly, this non-value serves as a front-line encouragement for illegal trade in endangered species and their products.

Without value, areas and expanding populations of animals become costs. Governments of developing countries do not have the resource to maintain adequate security and management operations required for strict protection.

The United States Congress has the challenge to develop policy which supports both the objective of endangered species protection and the objective of facilitating the development of viable and sustainable conservation efforts in developing countries. It cannot do either for endangered species under the existing ESA legislation. The ESA must be changed to reflect the international needs of rational, sustained, wise use of endangered species rather than punishing the species and the people that live with them.

**Bart O'Gara, Ph.D.**Wildlife Consultant  
Research Biologist (retired) U.S. Fish and Wildlife Service  
Wildlife Professor Emeritus, University of Montana**Statement Regarding Needed Reform of Listing Criteria  
for Foreign Species Under the Endangered Species Act**

The Endangered Species Act is designed to save rare species from further decline and extinction. However, in the case of foreign game species, exactly the opposite sometimes occurs. For many developing countries, tourist hunting is a conservation tool that the range nations are deprived of when the United States lists their species and interferes with trophy imports; yet many U.S. Fish and Wildlife Service officials and much of the general public mistakenly believe sport hunting is causing population declines and listing species against the wishes of host countries will benefit wildlife. Thus, the effect of the Act upon foreign species often is just the opposite of those intended. When applied to foreign species against range nations' wishes, the Act interferes with programs to conserve habitat and protect species because it deprives the nations of resources needed to manage wildlife and wildlife habitats.

Rectifying this problem should be considered as strengthening, not weakening, the Act. During much of the past 50 years I have lived, worked, traveled, photographed, hunted, and conducted or directed wildlife research in Africa and Asia. I have observed many instances in which our Endangered Species Act was reducing magnificent wild species to nuisances or simply meat in the eyes of local people, and local people -- not bureaucrats in a foreign country -- are the ones who will save or eradicate local wildlife.



Please allow me to expand on just two species with which I have first-hand experience -- the cheetah and argali (giant Asian wild sheep).

During 1973, I visited a large ranch in what is now Namibia. The rancher, Charley Pistorius, raised livestock but made most money from foreign big-game hunters. Cheetah were more numerous on that ranch than in any park or protected area I have visited in Africa.

Charley received a fixed daily fee for housing, feeding, and guiding hunters on his ranch. In addition, he received a trophy fee on each game animal taken by hunters. The trophy fee on a cheetah was then \$300 (U.S.), approximately 10 times that for kudu and gemsbok--the principle trophy animals in the area. Charley tolerated extensive cheetah predation on livestock and kudu calves because cheetah were "paying their way."

The cheetah had recently been placed on endangered lists by several countries and skins could not be imported to the United States. Charley had hired a German trapper to capture as many cheetah as he could for sale to zoos and pet dealers in countries that still allowed importation of live cheetahs. Then, Charley planned to poison the rest. He was sad about this because he liked cheetahs; however, he said they were too destructive of his other cash crops for him to keep them without some remuneration. Most Namibian ranchers felt the same way, and the largest cheetah population in the world was reduced dramatically by "protection."

In an effort to alleviate the problem, CITES now allows export of a limited number of cheetah trophies from Namibia. However, the damage may already be irreparable. "Bottle-necking" (reducing the population to a low level) undoubtedly reduced genetic variability in the Namibian population. Low genetic variability is considered a problem for conservation of the entire world's cheetah population.

During the late 1980s and early 1990s, I worked with wildlife officials in Qinghai Province, China, in an attempt to save large game animals in the face of expanding numbers of people and livestock. The Chinese Government protects practically all wildlife on paper, but it is on paper only. Practically no money is available for enforcement, education, travel, or other management necessities.

One International Hunting Area was established, primarily for the hunting of blue sheep. Although hunters are not willing pay high prices for blue sheep, the hunting program encouraged local residents to reduce poaching by outsiders, consequently all species of wildlife increased. The hunting program contributed only three percent to the local economy, but local people liked it and, for the first time, saw some value in wildlife beyond meat.

The program also provided the first money available for wildlife officials to conduct censuses and find out what was actually happening "on the ground." The future of the blue sheep hunting to compensate local people for other land uses and provide managers with needed expenses is not great. Nepal has larger blue sheep, provides comparatively cheap hunts, and is a colorful country to visit. China can barely compete. However, argali demand high prices, and a tiny percentage of animals illegally killed for meat could provide enough money to institute a viable Wildlife Conservation program. The nearby province of Gansu had initiated an argali hunting program that was increasing protection of the species and its habitat and providing wildlife officials with money for field studies.

The U.S. Fish and Wildlife Service placed the argali on the Endangered Species list and brought all progress to a halt.

China is expanding agriculture, manufacturing, and trade. Only enterprises that are profitable receive support. Consequently, most populations of argali probably will become extinct within 10-20 years.

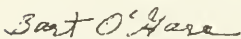
Armchair conservations with sav parks, photographic safaris and eco-tourism are the answers. Although all of these options have merit in the long run, they will be of little help in the short -- while large game animals are declining, or becoming extinct in China.

Chinese parks generally are unguarded, or the guards participate in poaching. This may change, but not fast enough to save some populations or even the species.

Photo safaris and eco-tourism require infrastructure, such as good roads and lodgings, that are not available. Also, tourists generally do not like to visit areas that are not scenic, especially those at 12,000-16,000 foot elevations. Lastly, hunters generally will pay 20-30 times more for a trip than will photographers or tourists. About 75 percent of hunters' money stays with local people and conservations agencies. Generally, less than five percent of tourists' money remains in the locale where game is found or with conversation agencies, most is spent on travel, accommodations and profit for the travel agency.

After a life of trying to save wildlife, I am convinced the U.S. Fish and Wildlife Service should not ordinarily be allowed to list a foreign game animal as endangered if the host country does not concur. Further, foreign species presently on the U.S. Endangered Species list should be removed if the host country so desires.

Respectfully,



Bart O'Gara

BO/kj

## Rob &amp; Bessie Welder Wildlife Foundation

Wildlife Research and Education

Post Office Box 1400 • Sinton, Texas 78387-1400

Phone (512) 364-2643

FAX (512) 364-2650

## THE ROLE OF THE ENDANGERED SPECIES ACT

## IN INTERNATIONAL CONSERVATION

The Endangered Species Act was passed by the U.S. Congress in 1973 to protect and ultimately enhance populations of scarce and sensitive life. It has had mixed results largely because of inadequate funding and the inability of recovery projects to be implemented by federal and state authorities. Nonetheless, it has been successful in bringing to safer levels several species of wildlife of which the American alligator and bald eagle are the most noteworthy examples.

In the interest of protecting living resources, many species were placed on endangered or threatened status without sufficient data to warrant such action. For example, several of the spotted cats and herbivores were not endangered. Efforts to remove them from endangered or threatened status have been expensive, time-consuming, and largely fruitless exercises.

Perhaps of most importance are problems of the Endangered Species Act in protecting wildlife in foreign countries. Aside from the problem of invasion of sovereignty and conservation affairs of range states, inadequate information and communication from range states have been available to the Scientific Authorities of the U.S. Government. Considerable resentment has built over this issue by range states and damage to conservation efforts has resulted.

Further, when a species is listed in a protected category thus preventing its utilization in recreational hunting or some other economic use, funds for licenses, safari fees, and other income

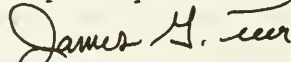
attendant to its use are lost. Loss of funds for conservation especially in developing nations, is serious because conservation efforts are fueled largely by tourism of which recreational hunting is a very important part. The effect has been a decline in conservation efforts in African and Asian nations.

Recommendations are as follows:

1. Review existing data on the status of species that are presently protected from use, especially those that are potentially economically important to conservation efforts;
2. Involve the range states much more closely than at present by providing funds and by sending U.S. scientists to work with them in developing information on the status of species;
3. Develop partnerships between conservation authorities of governments and private sectors that utilize or have scientific or conservation interests in biodiversity and species conservation; and
4. Develop true partnership arrangements between the U.S. Government and those nations with wildlife species that have been designated as scarce or sensitive.

The World Conservation Strategy embraces utilization as a factor in sustainable use of wildlife resources. Unless some attention is given to the needs of local peoples, and unless government authorities recognize the economic values of wildlife to conservation efforts in developing nations, wildlife resources will continue to be at risk.

Prepared by:



James G. Teer  
Welder Wildlife Foundation





STATEMENT OF TANADGUSIX CORPORATION  
REGARDING H.R. 2275  
THE ENDANGERED SPECIES CONSERVATION AND MANAGEMENT ACT  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman, my name is Ron P. Philemonoff and I am the Chairman of the Board of Directors and Chief Executive Officer of Tanadgusix Corporation ("TDX"). As you know, TDX is the Alaska Native Village Corporation for St. Paul Island, Alaska, organized pursuant to the Alaska Native Claims Settlement Act ("ANCSA"). St. Paul is one of the Pribilof Islands, along with St. George, and is located in the middle of the Bering Sea, approximately 500 miles from mainland Alaska.

In accordance with the provisions and purposes of ANCSA, TDX received title to approximately 90% of the 27,000 acres of land on St. Paul Island. Over the last 20 years, TDX has sought to manage and use its lands to meet the economic, social and cultural needs of its Alaska Native Aleut shareholders, as intended by Congress. Like other ANCSA corporations, TDX has had its share of successes and difficulties. Overall, we have been able to make considerable progress in our efforts.

The remote location of the Pribilofs in the Bering Sea significantly limits the economic opportunities which are available to us. Those that do exist are based on the wildlife and resources on the islands. That is certainly true of the two primary forms of industry present: commercial fishing and eco-tourism.

The residents of the Pribilof Islands share their home with a large population of North Pacific Fur Seals. In fact, the Aleut Natives were first brought to the islands as slaves by Russian fur traders in the 18th century to harvest the pelts of the fur seals. For nearly 200 years, the Pribilofians' lives have revolved around the harvest of fur seals. Even now, more than 10 years after the last commercial harvest, we still harvest the seal for subsistence purposes.

It is because of the seals that we are interested in your bill to reform the Endangered Species Act ("ESA"), H.R. 2275. The fur seals are protected and managed under the Fur Seal Act ("FSA"), as amended, and the Marine Mammal Protection Act ("MMPA"). As you well know, the provisions of the FSA and MMPA prohibiting the "taking" of the seals and other marine mammals are similar to those of the ESA. For the reason, we have experienced many of the same problems under the FSA and the MMPA which your bill seeks to address in the enforcement of the ESA.

One area in which TDX and its Native shareholders have experienced particular difficulties involve the unreasonably expansive meaning which the Fish and Wildlife Service and the National Marine Fisheries Service ("NMFS") have ascribed to the key term "take." It is overreaching and unfair to apply that standard so as to severely limit the use of private lands in ways that do not directly affect protected species (such as habitat modification), as both agencies have repeatedly done. To make matters worse, the agencies deny any suggestion that landowners are entitled to be compensated for their diminished property values.


On more than one occasion these policies have interfered with the efforts of TDX to develop or otherwise utilize its ANCSA lands, as was intended by Congress, for the economic benefit of our shareholders. The right and ability of our shareholders and other residents to use their own property has been limited on the basis of some very minor and indirect impacts on the seals. The most egregious of these was when the NMFS protested the building of some much needed home improvements by one resident because one corner of the roof of his house would be partially visible from the seals' haulout area on a beach a quarter of a mile away! Such policies are not only unreasonable and unjustified, but they are also inconsistent with the Congressional purposes and intent behind both ANCSA and the 1983 amendments to the FSA.

For the above reasons, we are pleased and encouraged by the provisions of H.R. 2275 limiting the definitions of "take" and "harm" and provide protections for private property. These provisions will go a long way to restoring the balance and reason which have been missing from Federal species conservation efforts. The ESA should focus on limiting those actions which have a direct and meaningful negative impact on a protected species. Such an approach strikes a more realistic and fair balance between the conservation of wildlife, which is definitely an important and worthwhile objective, and the rights and needs of people. It seems only fair that when the public's conservation needs are critical enough so as to justify restrictions on private property, the private landowners be compensated for the very real and meaningful losses in value which result from those restrictions.

Finally, we urge the Congress to go one step further and extend the same balanced and reasoned policies to the FSA, the MMPA and other statutory conservation regimes. All of the reasons which justify common-sense reforms of the ESA are also true of these other acts. It would be inconsistent and inequitable not to extend the same reforms to those of us who are directly affected by their enforcement. We ask that the Resources Committee take appropriate steps to ensure that our rights are not left unprotected.

Thank you for this opportunity to present our comments to the Committee.

TANADGUSIX CORPORATION

By 

Ron P. Philemonoff  
Chairman and Chief Executive Officer

## Comments on the Reauthorization of the Endangered Species Act

Statement of the  
Society of American Foresters  
for the Record  
Committee on Resources  
U.S. House of Representatives

September 20, 1995

### Introduction

The Society of American Foresters recognizes *The Endangered Species Act (ESA) of 1973* (P.L. 93-295, as amended; 16 U.S.C. 1531-1543) as one of this nation's most important and powerful environmental laws. However, the methods of implementing the act and its use to restrict forest management on public and private lands suggest modifications are needed to temper the initial goals of the act with the reality of society's need for forest resources.

The ESA was enacted to provide a means of conserving ecosystems upon which endangered and threatened species depend, and a program to conserve such species, including those covered by various treaties and conventions. Recent listings of species as threatened or endangered (T&E) have sharpened the debate on the goals, provisions, implementation, and consequences of the Act. Two species in particular--the red-cockaded woodpecker in the South and the northern spotted owl in the Pacific northwest--have intensified the discussion, especially as they are affected by management of forestlands. The protection of both species has significant impact on forest management options on a regional scale.

### ESA Reauthorization

The ESA is in need of and overdue for reauthorization. As a result of a two year review of the ESA Reauthorization by the SAF ESA Reauthorization Task Force, comprised of professional foresters, SAF made the following recommendations to the US Congress in 1993.

- Continue listing of species based solely on science.
- Provide for peer group review before completing the final listing process.



*Using the Scientific Knowledge and Technical Skills of the Forestry Profession to Benefit Society*

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- Develop criteria and guidelines for listing below the species level and use scientific techniques to answer questions on speciation, subspeciation, and distinct populations.
- Mandate recovery plans that address physical and biological feasibility and consequences, economic efficiency, economic impacts, social or cultural acceptability, and operational or administrative practicality of recovery actions. Include a range of recovery alternatives and risk analysis of each.
- Complete recovery plans within one year of listing using a core group of an experienced recovery team, managers, planners, and scientists.
- Develop measurable and clearly defined recovery objectives and recovery timeframes for each species at the lowest feasible social and economic costs.
- Evolve toward ecosystem management as public policy for public land management as documented scientific knowledge becomes available to support this approach.
- Prioritize species for recovery efforts to wisely allocate scarce financial resources, focusing on habitat protection for all species, not just listed species.
- Change the composition of the Endangered Species Committee ("God Squad") so that its members are high-level and knowledgeable resource and social science professionals from other federal departments.
- Recognize rights of private landowners and society's responsibility to mitigate costs for species protection on private land.
- Develop a phased approach from voluntary landowner plans to acquisition of property at fair market values for species protection.
- Delete citizen suit provisions against private landowners.

#### Basic Principles

Our position is built on several principles that together serve the needs of species protection and preservation while working within the general beliefs upon which society is built. The Society of American Foresters believes:

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- The conservation of species and ecosystems as provided for by the ESA is important to society and the profession of forestry.
- Management of the nation's forests should take into account the entire biotic community, especially species that are threatened or endangered.
- Species conservation must operate within the context of our democratic society that depends upon and values private enterprise and respects private property rights. As societal goals change, so do the related issues. Thus, laws will be enacted and modified over time to meet changing public values and expectations.
- The ESA must work in harmony with other laws (e.g., National Environmental Policy Act of 1969, National Forest Management Act of 1976, Federal Land Policy and Management Act of 1976) to maintain and support healthy forest ecosystems that can insure a range of resource benefits, both amenity and commodity. Therefore, conflicts surrounding the interpretation of these laws regarding species preservation should be recognized and reconciled.
- A comprehensive approach using all environmental laws and trending toward broader ecosystem management is needed to provide habitat protection for all species, not just those listed as threatened or endangered, thereby minimizing the need to list additional species.
- Institutions and landowners, both public and private, should support the purpose and intent of the ESA. Cooperation, not confrontation, will offer the greatest potential for success.
- Public and private forestlands have a significant role in the conservation of species and ecosystems. Pursuant to the 5th amendment to the U.S. Constitution, basic private property rights must be considered, valued, and protected where private lands are necessary to conserve a listed species or habitat.
- As U.S. and world populations continue to increase, there will be additional demands on forestlands to produce a range of outputs. The ESA must consider human needs for both commodities and a healthy environment.

The Society of American Foresters makes the following recommendations for improving the current ESA and its application.

### The Listing Process

Listing of species should continue to be based solely upon the best scientific and commercial data available, as currently stated in the ESA (Section 4b). The Secretaries of Interior and Commerce may, on their own initiatives, propose to list species, and interested parties may petition for a listing but, in either case, neither the general public nor the biological sciences community of interests are involved in the process for purposes of comment until after a proposal to list is published in the Federal Register.

With respect to the scientific basis of a proposed listing, the broad interests of society must be provided for in a revised process that guarantees an objective and impartial application of science in determining the adequacy of biological information that supports proposals or petitions to list a species.

Accordingly:

- Prior to a listing, a proposal to list should be referred to an independent Select Biological Committee (SBC) comprised of federal and state government and private sector scientists who are not involved with federal agency listing activities.
- The SBC "peer group" would accept, hear, and review all information pertinent to a listing proposal and make a finding about the scientific adequacy of the proposal. If the Secretary's subsequent decision to list is inconsistent with the SBC finding, the Secretary must disclose the inconsistency and explain to the public the reasons for proceeding with the listing.
- The SBC should also participate in developing or changing criteria and guidelines for listing any fish, wildlife, or plant below the species level. Modern scientific techniques such as electrophoresis, DNA analysis, or other state-of-the-art techniques should be employed where appropriate. The committee should also be involved in reviews of questions about speciation, subspeciation, and listing of populations.

### The Recovery Plan Process

The recovery plan process is one of the most fundamental components of the ESA, and is initiated after a species is listed. Federal agencies have an affirmative responsibility to support the development and implementation of recovery plans, and to work towards recovery of listed species. A revised ESA should specify that recovery plans should address

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the physical and biological feasibility and consequences, economic efficiency, economic equity, social or cultural acceptability, and operational or administrative practicality of actions aimed at promoting the persistence and recovery of listed species.

Additionally:

- Recovery plans should contain clearly defined objectives and timeframes that lead to measurable goals for recovery and ultimately delisting of the species.
- Critical habitat designation should become a key component of and emerge from the recovery plan process.

Habitat Conservation Plans are an important component of this recovery plan. Habitat Conservation Plans (HCP) have been developed by several private entities in voluntary cooperation with the U.S. Fish and Wildlife Service that are effective in preserving and providing habitat for endangered and threatened species. For example, Plum Creek Timber Company has established HCP's for both the Grizzly Bear and the Spotted Owl in the Cascades region of Washington. In the Southeast, Georgia Pacific Corp., Hancock Timber, and International Paper Co. have developed HCP's for the Red-cockaded woodpecker. Pinehurst Country Club in North Carolina has managed Longleaf pine to encourage the Red-cockaded woodpecker to inhabit their property to facilitate recovery of the species. All of this has been accomplished under Section 7 consultations within the current law.

Realizing the potential for extreme adverse impacts to the private property rights of Pacific Northwest landowners under the President's Forest Plan for the Northwest and Northern California, the U.S. Fish and Wildlife Service is proposing to exempt all private woodland owners whose property is eighty (80) acres or less in size from the Spotted Owl recovery program if no owls are present. Thus, the Interior Department is utilizing significant administrative leeway provided under the ESA. This is the type of science-based, common sense implementation of the ESA that is needed. More of this kind of innovation and constructive reauthorization discussion is needed. For example, there is a nation-wide five-acre proposed exemption that is part of Secretary Babbitt's 10-point proposal.

- The entire recovery plan process should be completed within twelve months following the listing of a species.

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- To improve the efficiency and continuity of the recovery plan process, special recovery teams should be established around a core group of experienced recovery process planners and scientists. The core team would be augmented with the appropriate species specialists from within and outside the agency responsible for each individual recovery plan initiative. Provision should be made for periodic review and public comment on proposed revisions.
- To gain the efficiencies that the shortened recovery plan process should yield, society must accept the fact that plans will be "living documents" that will change as additional data becomes available. Recovery plans should acknowledge key information needs and provide for research, inventories, monitoring, and specified timelines to fill information gaps and be adjusted when necessary to reflect new knowledge.
- Recovery plans should include alternative options for achieving recovery, with associated risk analysis to assess the likelihood (high, medium, or low) for success of these options. Whenever possible, the alternative that achieves recovery with the least adverse socioeconomic impact should be selected.
- The agency responsible for recovery initiatives should develop a set of criteria and guidelines for establishing a species recovery prioritization process that, among other things, recognizes actual and potential ESA program funding levels and limitations, societal values and priorities, and chances for recovery success.
- While recovery plans focus on public lands, a program to stimulate government/private partnerships should be developed and implemented where private lands are critical to the recovery effort. An option to include in such programs should be a provision to relocate listed species from private to public lands where feasible.
- Because the knowledge base for many situations is currently inadequate, a statutory requirement to list multi-species and "endangered ecosystems" would be premature at this time. Rather, the recovery plan process should be stimulated to evolve steadily over the longterm toward multi-species management plans that focus on ecosystems and ecological communities.

The Secretary of the Interior and Undersecretary of Commerce for Oceans and Atmospheres released a lengthy set of documents on March 6, 1995, which describe ten principles to balance endangered species protection with economic development. Their implementation



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will bring significant change to the way the Endangered Species Act is implemented. These principles are strikingly similar to SAF's recommendations to Congress in 1993 concerning reauthorization of the ESA. They are:

1. Base ESA decisions on sound and objective science.
2. Minimize social and economic impacts.
3. Provide quick, responsive answers and certainty to landowners.
4. Treat landowners fairly and with consideration.
5. Create incentives for landowners to conserve species.
6. Make effective use of limited public and private resources by focusing on groups of species dependent on the same habitat.
7. Prevent species from becoming endangered or threatened.
8. Promptly recover and de-list threatened and endangered species.
9. Promote efficiency and consistency.
10. Provide state, tribal, and local governments with opportunities to play a greater role in carrying out the ESA.

#### Private Lands--Roles and Responsibilities

Seventy-two percent of America's commercial forests are in private ownership. These private lands play an important role in the protection of biotic communities. The principle of private ownership of land is based both upon English common law and the 5th amendment to the U.S. Constitution. Private ownership thus carries with it a commensurate stewardship responsibility. A revised ESA should encourage willing stewardship through incentive programs designed for various land use and management activities. The revised ESA, and the implementation of its principles, should recognize the following:

- Private landowners who cede control of their lands to society in the name of preserving threatened or endangered species should receive just compensation.

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- Species recovery on private lands is a public responsibility. Private landowner roles concerning avoidance of "take," as defined in the ESA, must be clearly stated in federal law.
- Applicants for an "incidental take" permit are expected to file an associated Habitat Conservation Plan (HCP), which, for many landowners, could be prohibitively expensive. A new, more workable process should be substituted for the current HCP process. A phased approach, as outlined below, would address those landowners whose lands are essential to the conservation of a listed species, but who are unable to bear the costs.

Phase 1: Upon determination that a listed species occurs on private ownership, the agencies involved should, where the lands and species are essential to the conservation of the listed species, immediately seek to work with landowners and/or managers to develop a voluntary cooperative management plan that meets the species' needs for protection and landowner objectives. The plan should result in a documented finding of "no take" or "no jeopardy." Generally, the process should be completed within twelve months.

Phase 2: When steps to produce voluntary plans do not prove successful, and where material interests in the property are necessary to meet species protection goals, the responsible agency should seek to purchase a conservation easement covering the interests needed. Generally, Phase 2 should be completed within 2 years of the start of Phase 1 initiatives.

Phase 3: If neither Phase 1 or 2 prove successful, the responsible agency should seek either (1) to exchange public lands acceptable to the landowner, or (2) be prepared as courts may direct to justly compensate the owner. If an exchange is not acceptable, the agency should seek to acquire the affected property at a value at least as great as it would be without the presence of the listed species. Generally, Phase 3 should be completed within 3 years of the start of Phase 1 initiatives.

As an alternative to a judicial determination of easement value (Phase 2) or compensation for a taking (Phase 3), a "Market Values Board" should be considered to settle taking and values disputes that may arise. This approach should not be construed as making "compensation for a taking" an agency responsibility without a legal finding under current law that compensation for the taking is due. Rather, SAF proposes the alternative as a "willing buyer - willing seller" scenario within which to resolve administratively taking

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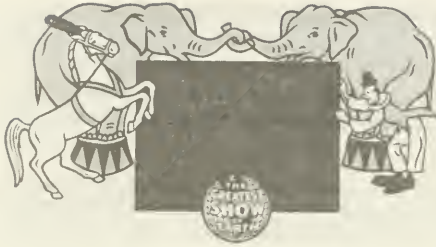
compensation cases quickly and fairly. If the result is not successful, landowner claims that compensation is due for a taking of property shall be addressed in the courts under existing law.

- If the responsible agency determines that management plans or acquisition of interests are not necessary, a landowner's responsibilities under the ESA should be considered terminated.
- Surveys or other practices to determine the presence of a listed species are a wildlife agency's (state or federal) responsibility. Landowners should grant rights of ingress, and be encouraged to cooperate voluntarily, but not be expected to bear the cost.
- Funding realities mandate establishing priorities for recovery of a species. Populations or individuals of a listed species outside of targeted recovery populations and/or critical habitats, and not part of the Phase 1 cooperative planning process, should not be subject to ESA restrictions.
- It is a federal responsibility to ensure landowner compliance with the ESA. If a landowner is thought to be in violation of the Act, citizen suit provisions under section 11(g) of the ESA should be limited to actions against the appropriate federal agencies.

#### The Endangered Species Committee

The make up of the current Endangered Species Committee ("God Squad") guarantees its impracticality and unworkability. Its federal members (Cabinet and near-Cabinet level--ESA, Section 7(e)[3]) are seldom personally involved in ESA tasks at hand or routinely familiar with the issues at stake. Except for the Secretary of the Interior (one of the six federal members) who chairs the ESA, the federal members should be replaced. In their stead should be appointed high-level and knowledgeable natural resource and social science professionals from other federal departments. The Secretary of the Interior, as under the current ESA composition, would be accountable for ESA exemption decisions.

SAF urges Congress to immediately address the issue of reauthorizing the ESA. What is needed and desirable is reauthorization of the ESA through thoughtful discussion to devise legislation that is firmly grounded in science, and with due consideration to economic and social factors.



**Statement by the Hon. Andy Ireland, Senior Vice President For Corporate Animal Policy and Development, Ringling Bros. and Barnum & Bailey Combined Shows, Inc.**  
**to**  
**The House Resources Committee, United States House of Representatives,**  
**Regarding Endangered Species Act Reform**  
**September 20, 1995**

### **OVERVIEW**

On behalf of Ringling Bros. and Barnum and Bailey, I would like to thank you for this opportunity to express support for several proposed amendments to the Endangered Species Act (ESA). Ringling Bros. has been and continues to be strongly supportive of the underlying purposes of the ESA. However, we believe, as do many others, that it is time to inject a measure of reasonableness and prudent judgment into its implementation.

Since 1871, Ringling Bros. and Barnum & Bailey has been recognized as the foremost circus in the world. For the more than 11 million people who attend our performances yearly, animals are an integral part of the circus. For many people, the circus is their first introduction to animals not native to the United States and which only exist in critically declining numbers in the wild. While several of these animals are now protected under the Endangered Species Act, the circus is often the first opportunity many have to actually see a live elephant, tiger or lion.

The educational value of this type of public exhibition is evident in the awareness it creates, not only of the animals themselves, but of the need to protect and preserve at-risk species and their habitats.

This statement outlines amendments we support along with relevant background

material and experiences of Ringling Bros. and Barnum & Bailey, which will illustrate the need to re-affirm and protect the educational and conservation value of public display of non-native wildlife.

In general, these amendments provide for --

- (1) general permitting for the public display and exhibition of endangered species by exhibitors licensed under the Animal Welfare Act, thereby recognizing that the public display of these animals contributes to the education of the public about the ecological role and conservation needs of the affected species; and
- (2) statutory recognition of the meaning of "bred in captivity" or "captive-bred" based upon the definition as currently set forth in the Code of Federal Regulations.

#### **Education of the Public**

Specifically, the amendments authorize a "public display permit," under terms and conditions that the Secretary of Interior prescribes. The permit is similar to that created for the marine park and aquaria community under the Marine Mammal Protection Act amendments enacted last year. This general permit simplifies and provides clear statutory authorization for the public display community to continue certain limited activities in accordance with the ESA.

In terms of the circus, these activities involve the possession and movement of non-native endangered species as part of a traveling exhibition.

The permit requires specific standards and criteria for eligibility. Principal among the criteria for obtaining such a permit is the recognition that the public display or exhibition of living wildlife contributes to the education of the public about the ecological role and conservation needs of the affected species. Permitted activities include buying, selling, importing and exporting of endangered species by USDA-licensed exhibitors for authorized public display purposes. Because the animals involved are, by law, either captive-bred or acquired prior to the Convention on International Trade in Endangered Species (CITES), there is no detrimental impact on wild populations. In fact, the resulting increase in public awareness to the plight of endangered species actually helps to further efforts in conservation of species and their habitats.

#### **Bred in Captivity Definition**

The amendments also clarify the definition of "bred in captivity" and "captive-bred" to reflect the current regulatory definition that has been in use for many years. Under the amendment, such terms mean "wildlife, including eggs, born or otherwise produced in captivity

from parents that mated or otherwise transferred gametes in captivity, if reproduction is sexual,

or from parents that were in captivity when development of their progeny began, if development is asexual."

### Licensed Exhibitors

The remaining amendment conforms the proviso regarding the definition of commercial activity with the above amendments. The Endangered Species Act prohibits trade in endangered species for commercial purposes. However, it was not the intent of Congress to include public display or exhibition of commodities as "trade". The current regulatory definition reflects this, but has been vulnerable to legal challenge and requires clarification. Public display of live species by USDA-licensed exhibitors is currently recognized as beneficial to the species' propagation or survival and the amendment establishes that this activity is non-commercial for purposes of the ESA.

## EDUCATION AND CONSERVATION

The animals which are part of Ringling Bros. and Barnum & Bailey circus are, in essence, ambassadors for those of their species in the wild whose habitats, and consequent survival, continue to be in jeopardy. The educational value of the public exhibition of wildlife lies in the awareness it creates -- not only of the animals themselves -- but of the need to protect and preserve threatened or endangered species and their habitats.

In response to the Fish and Wildlife Service proposed rulemaking deleting education as the sole basis for captive-bred wildlife registration, Ringling Bros. and Barnum & Bailey also commissioned a study on the effect of live animal entertainment on education and, in turn, the effect of education on preservation of endangered species. The study, by Yale University Professors Dorothy and Jerome Singer, "The Circus As An Educational Experience: Teaching Children about Animal Life," reflects the results of a survey of general academic articles and studies on the educational value of live entertainment.

A study by the Roper Organization, entitled "Attitudes of Parents and Teachers Towards Education and Animals in the Circus," confirms this. Interviews with 1000 parents of children ages 2 to 12, and over 400 teachers, illustrate the circus' contribution in providing a significant forum for children to become aware of, and be educated about, animals. More importantly, the study shows that this awareness and sensitivity promote an increased desire on the part of the public to protect animals and their habitats.

The Roper Organization's poll focuses more specifically on the link between live viewing of animals in the circus environment and the resulting increased awareness among parents, teachers and children of the need to conserve and protect exotic wildlife. Some of the results of these studies are summarized below:

- Ninety-six percent of teachers say that seeing animals in a circus adds to the interest students have in learning about animals and makes them want to protect these animals in the wild.
- Live animal acts evoke huge responses in children and are talked about long afterwards. The glamour of the circus experience stimulates a child's interest in animals and makes him more receptive to learning more about animals.
- Circus visits provide an opportunity for teachers and parents to enhance learning about animals (and thus conservation needs) through the use of follow-up materials.
- Seventy-two percent of parents believe that showing children what the animals can do will help them learn respect for the animals and make them want to protect them.
- Seventy-eight percent of teachers have added information on circus animals to their curriculum as a result of circus attendance. Eight in ten teachers surveyed felt that after a visit to the circus, students will be more likely to protect these animals in the wild as a result of their new knowledge and respect for wildlife.

It cannot be disputed that there exists a strong and compelling public educational value in viewing exotic and threatened species. One's life experience as well as studies such as those cited directly support that observation. Children who are sensitized toward the plight of endangered species are more likely to be conservation minded as they mature. Parents whose children are interested in animals are more likely to act in ways that promote conservation efforts through involvement in the political process or public activism.

Recognizing the well documented link between seeing live animals at the circus and the opportunity to educate children about those animals and their conservation needs in the wild, Ringling Bros. and Barnum & Bailey realized the impact and contribution that the circus could make in the areas of education and conservation. Established in 1975 to respond to the flood of requests received each year from educators, Ringling Bros.' Department of Educational Services now provides a variety of programs, including:

1. Up Close and Personal. This specially scripted program brings classrooms to the Circus for a special performance, which includes a complimentary teacher's guide.
2. Touch Tours. To bring the Circus experience to the hearing impaired and physically-challenged, Ringling Bros. designed a special tour which enables patrons to actually touch and sense the animals and other aspects of the circus. In conjunction with

the National Braille Press, Ringling Bros. designed a braille circus program. Sign-language tours are also available and include question and answer opportunities about the circus and its exotic animals.

3. CIRCUSWORKS. An intensive teacher workshop, CIRCUSWORKS, provides a half-day resource building seminar geared towards children K-8th grade. The seminar is offered at no cost and provides teachers with reproducible materials in a variety of subjects such as math, physics, arts, social studies, sciences and animals in particular. CIRCUSWORKS is provided on a weekly basis across the country and has been presented at several reading conferences.

4. Ringling Readers. Ringling Bros. was presented with a wonderful opportunity to work with the Reading is Fundamental (RIF) program presented in schools, libraries and other care facilities nationwide. The Circus was especially honored to participate in a White House program on RIF. Recognizing the importance of encouraging the development of reading skills in children through the use of fun and informative materials, Ringling Bros. began publication of its own quarterly complimentary circus-theme newsletter, the "Three Ring Gazette". With a current circulation of over 35,000 students and teachers, the Gazette provides an insight into circus life with an emphasis on the need for conservation and protection of endangered wildlife.

5. School/Library Kit. Containing a variety of activities relating to animals and other aspects of the circus, this kit is available to educators and librarians at cost.

6. Public Outreach. In light of the valuable educational and conservation experience of a visit to the circus -- especially to those who would otherwise have no opportunity to view these exotic and magnificent animals in a live setting -- Ringling Bros. distributes more than half a million free tickets each year to disadvantaged children and their families. Ringling Bros. believes that the family experience provides a unique and valuable impetus for continued learning and education.

The efforts of Ringling Bros. and Barnum & Bailey to educate about and conserve endangered species have recently been jeopardized by a proposed revision of the captive-bred wildlife (CBW) registration system. Although the ESA prohibits certain uses and activities involving endangered species, exceptions are available when such activities serve a scientific purpose *or* "enhance the propagation or survival" of species. Integral to the definition of enhancement of species survival is conservation education. The Congressional findings in the enacting legislation itself specifically recognize education as a contributing factor to the conservation of endangered and threatened species. The Fish and Wildlife Service implementing regulations reflect this component, as well.

In fact, the Fish and Wildlife Service made a finding in 1979 that the live exhibition of wildlife before the public plays a positive and beneficial role in enhancing the propagation of the species exhibited. The Service stated that--



"Evidence supports a finding that normal practices of animal husbandry, the accumulation, holding and transfer of surplus wildlife, and the live exhibition of wildlife to educate the public about the ecological role and conservation needs of the species are activities that are beneficial for the purpose of enhancing propagation or survival. Accordingly, the Service proposes to permit such activities under conditions that will provide sufficient regulatory control without impeding the activities." (emphasis added). (See 44 Fed. Reg. 30044 (May 23, 1979).

In addition, the Congress found and declared in Section 1531 of the ESA -- Congressional Findings and Declaration of Purpose and Policy -- that endangered or threatened species of "...wildlife...are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people..." (emphasis added).

Nonetheless, the Service promulgated a regulatory review of the CBW registration system and challenged the conservation education value of public display. In spite of the well documented evidence favoring the educational value of public display, and absent any evidence of an adverse effect of exhibition on the protection of endangered species or their habitats, the Service deleted conservation education as a sole qualification for registration under the CBW system. In addition, a proposed rulemaking is pending which would remove conservation education as a basis for permits in general under the ESA. These actions are simply not justified. Contrary to its intended effect, this change will have a detrimental effect on the long-term conservation of endangered species.

The creation of a public display permit for exhibition purposes resolves these issues and injects some certainty and reasonableness into the regulatory process under the ESA.

#### WILDLIFE BRED IN CAPTIVITY

In addition to providing an opportunity for people to see and learn about endangered species, Ringling Bros. and Barnum & Bailey is engaged in the captive breeding of endangered Asian elephants. Since 1962, Ringling Bros. and Barnum & Bailey has been involved in the births of more than 25 baby elephants. Given the increasing degradation of the natural habitat of a species as critically endangered as the Asian elephant, captive breeding becomes an essential factor in rescuing the species from the brink of extinction and strengthening the likelihood of its long-term viability.

Ringling Bros. and Barnum & Bailey currently owns and operates its own Asian elephant breeding facility in Florida where it successfully breeds through natural service and researches artificial insemination, animal husbandry and reproductive functions. Ringling Bros. and Barnum & Bailey works closely with universities and zoos on breeding techniques and has been involved in breeding loans with other entities in an effort to strengthen and enlarge the current captive gene pool. Ringling Bros. and Barnum & Bailey's reputation as a responsible

and knowledgeable source with respect to animal care and husbandry practices is exemplified by the numerous requests received for information and assistance from zoos, veterinarians and universities.

In addition to endangered Asian elephants, the owner of Ringling Bros. and Barnum & Bailey is also very involved in the conservation of rare white tigers and lions through the production of the Las Vegas show featuring world renowned entertainers and conservationists Siegfried & Roy. Siegfried & Roy have been heralded for their successful breeding of Royal White Tigers and are now entering into an alliance with the Johannesburg Zoological Society and the Timbavati Nature Reserve to do the same for the endangered white lions. With fewer than 10 white lions currently in existence, successful captive breeding is the only hope for survival of this rare species.

In 1979, the Fish and Wildlife Service concluded that wildlife in captivity "can be used to bolster or restock wild populations ... provide an alternative to wild populations ... and ... provide opportunities for research for wild populations." The Service stated further, that it "believes that a wide range of activities involved in the propagation and maintenance of wildlife may be permitted for [enhancing the propagation or survival of the affected species] when it can be shown that they would not be detrimental to the survival of wild or captive populations of the species." (30 Fed. Reg. 30044 (May 23, 1978)). In the long run, conservation of many species will continue to be partially dependent upon captive breeding. The amendment, therefore, stands to enhance conservation efforts, and through such efforts, the propagation of affected species.

Because of the requirements of the ESA and CITES, the public display community relies on animals born and bred in captivity in the United States or those acquired prior to the enactment of CITES. As the population of pre-CITES animals in captivity ages, however, there is an increasing need to develop and encourage viable captive-breeding programs. In this country the ESA is the domestic enabling legislation implementing CITES. In light of captive breeding's potential for enhancing the continued existence of endangered species and the goals of CITES, the ESA should encourage, not frustrate, captive breeding efforts.

Captive populations represent an essential component of preserving and enlarging gene pools for the future and provide an opportunity to study the behavior and needs of endangered species. The mere fact that public display is entertaining or for-profit does not diminish its value in terms of education or conservation awareness. The private sector should not be discouraged from investing its time and resources in the conservation and propagation of species and their habitats. Unfortunately, the current policies of the Fish and Wildlife Service do just that.

In order to receive permission to export an endangered species under the ESA, it must be shown that the animal was either "pre-Convention", i.e., acquired prior to the CITES ban on trade in endangered species, or "bred in captivity". The current regulatory definition of captive-bred under the ESA requires that the offspring be born in captivity to parents that mated in captivity [50 CFR §17.3]. For purposes of export, however, the Service is imposing a more

stringent and inconsistent policy requiring proof of a viable second generation captive population. This requirement reflects unilateral implementation by the Fish and Wildlife Service of a CITES resolution adopted at the Conference of the Parties in 1979. Notwithstanding the existence of a conflicting and established regulatory definition, the new requirement has never been formally adopted as domestic law either by Congressional ratification nor by standard rulemaking pursuant to the Administrative Procedures Act.

Even more significant than the Service's failure to submit the "second generation" requirement to Congress or the public rulemaking process, is the fact that this higher yet completely ineffective threshold undermines current private sector efforts regarding the breeding of animals in captivity and, thus, the long-range viability of that species.

For example, the adverse effects of the CITES-inspired captive-bred policy are illustrated by Ringling Bros.'s 1994 application for permits to take eighteen of its Asian elephants to Toronto, Ontario for a week-long engagement. Fourteen of the elephants were "pre-convention" and four were born in captivity in this country to parents who mated in captivity. Despite the definition set forth in its own regulations, the Service applied the CITES "second generation" standard to the export applications. As a result, Ringling Bros.' request for permits to transport (export to Toronto and re-import back to the United States) four captive-bred Asian elephants was denied, although there was no defensible rationale given to support such a denial. . . only the Service's "policy" in direct conflict with the regulations.

Subsequent negotiations with Fish and Wildlife Service and Canadian officials, during which Ringling Bros. pointed out the hardship of separating four young elephants from the herd and the logistical dilemma of housing the animals for a week at the US-Canadian border, did yield a form of compromise. Ultimately, the four elephants were allowed to travel to Canada provided they did not perform in the show. This counterproductive and illogical outcome is but one example of the adverse effect of the application of this unwarranted new policy. This unnecessarily frustrating experience will be repeated each time Ringling seeks to travel abroad with the Circus and return unless a sensible resolution is implemented such as the one outlined in the proposed amendments.

To remedy this, the amendment adopts statutorily the regulatory definition of "bred in captivity" and "captive-bred" developed by the Fish and Wildlife Service and currently found at 30 C.F.R. 17.3. Captive breeding is recognized as an important means of assisting in the propagation and survival of species of certain wildlife and one that both Congress and the Fish and Wildlife Service have recognized in the past.

## ADDITIONAL MATTERS

### Delays in Permit Notices

Another issue of concern is the prompt publication of permit notices in the Federal Register. Publication is a required step in the permitting process -- purely administrative and in no way discretionary. Yet, unnecessary delays in publication often undermine or render moot the underlying permit request.

One example is a situation Ringling Bros. and Barnum & Bailey recently faced in an attempt to import several captive-bred lion cubs from England. The cubs had been born in captivity in England while their owner/trainer was performing in the United States. Because it is critical to begin training at an early age, arrangements were made to import the cubs to the United States. Weeks became months and no publication of the permit notice appeared in the Federal Register.

Delays in publication can and do result in substantial hardship on everyone involved including the wildlife, and can have the same effect as a denial. In this case, months of delay by the Service in publishing the permit notice resulted in a permanent loss of valuable training time and Ringling Bros. and Barnum & Bailey was ultimately forced to abandon its effort to import the cubs. This type of problem not only impedes the goals of the ESA but needlessly frustrates the operations of the Circus.

### Animal Welfare and Husbandry

In closing, I would like to address briefly the matter of Ringling Bros. and Barnum & Bailey's commitment to quality and humane care of animals, especially those in its care.

As an exhibitor of animals, Ringling Bros. and Barnum & Bailey is subject to U.S. Department of Agriculture (USDA) regulations under the Animal Welfare Act (7 U.S.C. 2131, et seq.) and must apply for an Exhibitor's License every year. The Circus is subject to regular *unannounced* inspections by the Animal and Plant Health Inspection Service (APHIS) and a written report is filed by each inspector. Never, in the past 20 years, under its present management has Ringling Bros. been cited for any incident of animal neglect or abuse.

Ringling Bros. and Barnum & Bailey works diligently and cooperatively with government agencies to ensure its full compliance with the Animal Welfare Act and to be responsive to any suggestions relative to the care and welfare of animals in its charge. Ringling Bros. and Barnum & Bailey takes its responsibilities to the animals in its immediate care, as well as its additional responsibilities to those in the wild, very seriously.

## CONCLUSION

Captive populations represent the hope for the future in terms of preserving gene pools and studying the behavior and needs of endangered species. Without certainty in the law and the incentive to continue to invest in and display these species, private enterprise participation in conservation efforts will decline.

Ringling Bros. and Barnum & Bailey furthers the cause of the Endangered Species Act in two ways -- by providing a public display that is both educational and entertaining and through its state-of-the-art efforts in captive breeding. We take our responsibility to care for these animals seriously and believe that through cooperation between the private and public sectors we can work together to help conserve species and protect habitats for future generations.

Mr. Chairman and Members of the Committee, I appreciate your consideration of the concerns I've expressed about the ESA and our support for amendments to address those concerns. These amendments, we believe, represent a sensible and responsible approach to the issues and are supportive of the underlying purposes of the Endangered Species Act. We urge the Subcommittee to incorporate the amendments in its legislation to reform the Endangered Species Act.

**IMPLICATIONS OF THE U.S. FISH AND WILDLIFE  
SERVICE ENDANGERED SPECIES ACT OF 1973  
ON CONSERVATION ACTIVITIES IN AFRICA  
ESPECIALLY TANZANIA**

## 1.0 INTRODUCTION:

The alarming rate at which wildlife populations, are declining in their respective ranges has drawn the attention of many conservation interest groups, governments and other international communities. Indiscriminate poachers, illegal dealers and traders working in concert to fuel international lucrative markets with wildlife products, and coupled with man and animal conflict at points of interface appear to be increasing and are the main causes of driving certain species to the verge of extinction.

Habitats occupied by certain endangered species have also been degraded and fragmented as a result of encroachment and malpractices by man. Human population numbers are also on the increase and undoubtedly the multiplier effects cannot be overemphasized.

In the course of recognizing these unprecedented problems and concerned that wildlife resources must be conserved for the benefit of the present and future generations, governments in Africa including Tanzania, and the international community with specific reference herein to the U.S. Fish and Wildlife Service (USFWS) have made efforts to propound possible solutions to the causes of decline in numbers of certain species, but the stricter domestic measures many times put in place by the USFWS appear to be too restrictive to allow for countries in Africa to practice the wise use of resources, as spelt out by international bodies like IUCN, The Convention on Wetlands Especially as Water Fowl habitat (The Ramsar Convention), CITES - which curbs illegal trade, etc.

This document examines some of the threats and mitigations in place, at local and international circles, which respectively may witness the disappearance and/or the Survival of Endangered Species from Africa. The document also examines the USFWS Endangered Species Act in light of the strategic types of mitigation in place. It is the belief of the conservation community that this Act may not enhance other conservation strategies in place today.

## 2.0 THREATS FACED BY WILDLIFE RESOURCES IN MOST OF THE AFRICAN RANGE STATES ESPECIALLY TANZANIA

The decline in wildlife populations in Africa has mostly been attributed to the poaching fueled by illegal trade more than habitat loss. In the advent of economic development habitat loss is also becoming a matter of great concern. Most of the endangered species have been exposed to threats including:-

- (i) Poaching and illegal trade for raw and finished products which finally find way into international lucrative markets. Illegal traders and dealers in wildlife products enjoy windfall

profits which constitute the major part of incentives for poaching. Benefits left to local people in range states are marginal and those involved in poaching continue to remain poor.

(ii) Habitat loss through encroachment in acquisition of increased farmland and livestock keeping area has become increasingly common. This is a manifestation of human population growth most of whom living in rural areas.

(iii) Possible inadequacy of legal instruments has made it difficult to gun down culprits and in certain cases the punishments imposed have no correlation with the status of the species in the wild.

(iv) The use of resources in many areas is not often done through guidelines which could be born out of management plans for the respective areas.

(vi) Local communities who live amongst wildlife in rural areas do not derive adequate and direct benefits from the use of these resources. The participation by local communities in conservation is therefore inadequate and this situation may condemn conservation efforts from government.

### 3. MITIGATIONS TO THE THREATS

#### 3.1 MITIGATIONS IN AFRICA

(i) Up-date of legislation to adequately address conservation issues is receiving attention, e.g. in Tanzania those convicted of elephant poaching and found guilty are sentenced to a jail period 30 years.

(ii) Conservation Areas are delineated with boundaries demarcated by use of modern technology.

(iii) Resources use forms are made according to the location and access of a Conservation Area. The Selous Game Reserve for example, is infested with tsetse flies, highly inaccessible and is mostly used for sport hunting activities. At the other extreme the Serengeti National Park is strictly used for photographic tourism purposes. In doing so one finds that the income generated per unit area from a conservation area is optimal. Both types of use are therefore necessary.

(iv) Management plans for conservation areas are being put in place.



(v) Policies and Management Plans for significantly traded species and those which are critical or endangered are speedily coming in place. Tanzania has policies and management plans for the elephant, crocodile, bird trade etc.

(vi) Most Range States (In Africa) have taken the initiative to ratify or accede to International Conventions or Agreements use of resources sustainably. Recognizing that illegal trade in wild fauna and flora in Africa has been going on unabated notwithstanding the existence of effective international instruments, it is pertinent to underline here that a legal action to reduce and finally eliminate poaching and finally eliminate poaching has recently been concluded in Africa. The action called The Lusaka Agreement will come into force as soon as a certain number of States shall have ratified it. This Agreement is open for ratification or accession to all African countries. It is an action to reckon with since its adoption has put in place a mechanism for closer co-operation among designated national law enforcement agencies.

(vii) - Recognizing that governments alone have not fully addressed strategies to stall conservation activities and that depletion of wildlife resources continue although at reduced rates.

- Accepting that while resident hunting in many African countries is practiced by the local "rich" people and the resident expatriates, tourist/sport hunting remains to be practiced by tourists from overseas,

- concerned that local communities (villagers) can neither afford the resident licence fees nor to use traditional weapons under existing legislation, and therefore do not have the rights of use of wildlife resources accruing in areas which would otherwise be used for agriculture or timber logging.

Decisions have been made across Africa to develop coherent community conservation policies which take into account local conditions of human settlement and land tenure systems. It is within the premises of intergrating local communities and conservation that governments must promote the conservation of wildlife and its associated habitats by allowing the villagers to enjoy direct benefits that accrue from resource-use based activities. Having done so the villagers who are often times employed by dealers and traders in wildlife resources and in turn labelled as poachers shall change their attitude and join hands with governments to stamp-out poaching. Community conservation projects around some protected areas in Tanzania have been launched to this effect and results are that poaching in and outside protected areas has declined significantly.

### 3.2 MITIGATIONS IN INTERNATIONAL CIRCLES

#### (i) REVISION OF RESOLUTIONS:- e.g. CITES

Under Article (iii) 3(a) of the CITES Convention it became obligatory for the Scientific Authority of the State of Import to determine and decide that the import of the respective specimens and especially for Appendix I Species shall be at the level and for purposes which are not detrimental to the survival of the species. It has remained the concern of many range states that this wording of the convention did not require the Scientific Authority of the State of import to determine that the EXPORT shall be for purposes that are not detrimental to the survival of the species as after all this is the prerogative of the state of export as stipulated in Article (iii) 2(a). But importing countries like the U.S. have often times taken a position of intent that imports would be subject to the findings by their Scientific Authorities. At the 9th meeting of the Conference of the Parties to CITES the authenticity of the findings of a Scientific Authority in an importing country was discussed. The point is - Does mere information gathered by the importing country qualify a decision that specific imports, like tourist hunted elephant trophies, be banned without appropriate but all very objective and expensive scientific studies which undertaken in the exporting countries anyway! Since this is not the case the 9th COP recommended a revision of various CITES resolutions including, for example, Resolution Conf. 2.11 (Trade in Hunting Trophies of Species listed in Appendix I) that under the new Conf.2.11 Rev.(b) the problem raised in the wording of Article (iii) 3(a) has been harmonised. Through free but regulated use of resources in exporting countries wildlife can be saved from going extinct.

It has also been the concern of many Parties to CITES that several cases of violation of the Convention have occurred as a result of inadequate implementation by Management Authorities in both importing and exporting countries. In circumstances, the 9th COP called for the obligation of Parties to collaborate closely in the application of the Convention through exchange of information on matters related to illegal trade in wildlife. The situation in developing countries including matters related to their socio-economies, and the like in relation to the implementation of the Convention was also underscored. It was therefore recommended that Resolution Conf. 3.9 - International Compliance control be revised. Res. Conf. 3.9 Rev. (a) - (c) is now in place - advocating for strict compliance and control in the regulation of trade in wildlife. These are just a few revisions, among several, which are made at meetings of the Conference of the Parties to CITES to ensure continued survival of endangered species.

#### (ii) NEW RESOLUTIONS:

At every meeting of the conference of the Parties new resolutions are made. Resolutions deemed obsolete are repealed of these meetings. Decisions are also made at CITES meeting, and a few from the 9th COP are herein quoted.

Where national legislation is believed generally not to address the requirements for implementation of CITES actions were put in place. The need for Parties to take all the necessary steps to put in place legislation for implementation of CITES; Regarding issuance of permits - vigilance is necessary when issuing documents for valuable specimens and specimens of species listed in Appendix I of CITES; Regarding acceptance of Permits, the CITES Secretariat's advice is necessary before acceptance of the import of live specimens of Appendix I species deemed to have been bred in captivity, and Parties need check with the Secretariat when in doubt about the authenticity of permits accompanying shipments in suspect - Regarding illegal trade, Parties should endeavor to identify and convict suspects upon seizure of specimens, Regarding implementation of Resolution Conf. 8.9, "The Trade in Wild - caught Animal Specimens", the Animals Committee should choose a "safe" level of trade for species subject to significant trade and are listed in Appendix II of CITES; etc, etc.

#### 4.0 THE USFWS ENDANGERED SPECIES ACT

The USFWS Endangered Species Act of 1973 as amended by the 100th Congress embodies purposes which mean well to conservation especially in the context of the U.S. legislation system. However, this document underlines the following observations with subsequent suggestions:-

(i) Sec.2(4)(F) and (G) - that the U.S. has pledged for sovereignty in the international community to conserve to the extent practicable various species of fauna and flora facing extinction is respected. The participation of the U.S. in CITES matters todate is commendable and would like to see more of its (her) various inputs in the form of technology, financing, training, law enforcement techniques, etc.

In Sec.2 subsection (a) the Act underscores the need to provide a means where ecosystems which are meant to be the home of threatened and endangered species may be conserved with the aim of providing a program which allows for taking measures to conserve the respective species. But while the Act is tailored to fully address issues in the U.S. it remains a matter of great concern that in the international context practical application of the Act may not bear fruits fully. This point can be clarified further with the example of the black rhino (*Diceros bicornis*) which inspite of international obligations in place the species is at at the brink of extinction perhaps as a result of lack of funds. It appears therefore that stricter domestic measure like a ban in trade alone may not enhance the conservation of species. At the 9th meeting of the Conference of the Parties to CITES South Africa's proposal to trade in live rhinos was endorsed. This move may not be favoured by the U.S. Endangered Species Act

but the gist of the matter is that revenues generated from the sale of some rhinos shall be ploughed back into rhino conservation activities.

Section 4(a) of the Act constitutes criteria to determine whether a species is threatened with extinction or endangered. But this assumes that if some of these factors prevail then the species or its habitat may not recover if trade in its products is not curtailed. But contemporary conservation strategies in Africa as stipulated in item 3.1 of this document appear to reduce the speed and force of destruction of habitat or decline of species. A mere blanket ban in the use of wildlife may not be the solution.

Section 4(3)(b) - "Basis for Determinations" of the Act empowers the Secretary to "make determinations required by subsection (a)(1) on the basis of data available to him after conducting a review of the status of the species" .... In many instances observation has it that information which may not necessarily be scientific data has been used. An example is the recently (1994) USFWS Proposed Guidelines on the African Elephant Sport-hunted Trophies. While the guidelines were constructive and needed comments from the range states it was puzzling to have the need to spend time and money on this exercise when respective range states have deposited hunting quotas with the CITES Secretariat. These quotas were sent to all CITES member states in the form of a notification. These quotas are set by Scientific Authorities of the range states, and a move such as the proposed guidelines by the USFWS questions the credibility of these authorities. It must be known that the USFWS does not undertake research projects on site in the respective range states. How could it be possible to question data from range states without scientific data collected by the USFWS or by a reputable organization (in collaboration with range states) The 9th meeting of the CITES COP has addressed this matter as stipulated in item 3.1 of this document.

It is necessary to understand that in the case of the African elephant in areas where this species brings no tangible benefits, evidence suggests either that illegal exploitation will take place or that large numbers of elephants will be shot on sometimes dubious pretext of causing damage to human property. Both these activities are considerably more detrimental to the survival of the African elephant than sport hunting. In the circumstances the USFWS should adopt measures for the import of trophies or live animals that follow an approach of adaptive management as practiced by many range states.

##### 5. CONCLUSION AND RECOMMENDATIONS:

- (i) The USFWS Endangered Species Act appears practically feasible for the U.S. States. It may only be most modified to suit modern conservation strategies in other countries. Modifications would include:- making management plans for conservation areas:

- ensuring that policies and management plans for endangered species are in the countries of origin are in place

- Donors especially in this case the USFWS should help fund sustainable fact finding and strategic planning and law enforcement projects.

- Confidence in data that comes from Scientific Authorities of other range states

- Appreciation of the contemporary strategies that guide towards wise use of resources including, intergrating local communities with conservation activities, promoting sustainable taking of species for example sport hunting of elephants, etc.

(ii) It is the concern of many African countries as to how the USFWS would monitor the effectiveness of the Act when projects of this nature are not known to be conducted in the endangered species' range states. It is herein submitted that the USFWS Act may not be an appropriate mechanism for checks and balances. It is certainly not the appropriate backstopping mechanism for species whose continued existence is questionable.

(iii) The Act and various USFWS guidelines do impose on other range states to undertake detailed and regular surveys outside the possible scope, if one considers that most of the areas of occurrence of endangered species in Africa are heavily-wooded. Routine monitoring of endangered species is done in most range states and with increasing law enforcement efforts it should suffice to accept suggestions for harvest levels done by the range states and endorsed by international bodies.

(iv) Reputable international conservation bodies are in place with varying strategies to conserve endangered species. Activities undertaken by these institutions in concert merge to ensure survival of endangered species. CITES, for example, controls illegal trade. CITES resolutions and decisions are revised at every meeting of the Conference of the Parties to keep abreast of technology and strategies used by poachers, illegal traders and dealers. Since the U.S. is a member to most of these bodies it should suffice to operate within the premises of the mechanisms agreed upon by the international community, and it would be expensive to introduce and put into action other instruments like this Act in countries which are satellite to the U.S.

## THE ESA AND AFRICAN RHINO CONSERVATION - A SOUTH AFRICAN PERSPECTIVE

DR MARTIN BROOKS (*Head Scientific Services, Natal Parks Board, KwaZulu-Natal, South Africa* , [*Also Chair IUCN SSC African Rhino Specialist Group, Chair Rhino Management Group*])

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### INTRODUCTION

The concern shown by the USA in the conservation of threatened and endangered species in other countries is appreciated throughout the world. However, the United State's Endangered Species Act (ESA) as it currently stands is controversial with regard to foreign species.

The crux of the debate concerning the application of the ESA to foreign species is one of philosophy...

- Should one adopt a strategy like the current ESA that largely seeks to criminalise and severely restrict or prohibit trade in rare species?
- Alternatively, should one's focus be on providing incentives for the conservation of biodiversity and maintenance of habitat in range states; whilst promoting measures to increase self-sufficiency in funding conservation ?
- Should one pursue conservation or preservationist policies ?
- To what extent should the ESA promote policies that take into

account human needs in developing countries ?

- Is commercialisation and sustainable use of wildlife necessarily a bad thing when a species is classified as threatened or endangered?
- Does the ESA currently make a significant contribution to conservation of rare foreign species such as rhinos? Alternatively, could the ESA even be prejudicial to successful conservation in foreign range states?

The addition of foreign species to the ESA took place at a time when there was no adequate international wildlife trade legislation. With the subsequent development and growth of CITES to become a major international treaty with 108 member countries...

- Is the application of the ESA to foreign species now largely redundant, seeking to duplicate much of what is already covered by CITES?

## CHOICE OF RHINOS AS CASE STUDY SPECIES

Given that the ESA seeks to improve the status and long term prospects for endangered and threatened species it is worth examining the South African case histories of two rare flagship species - the black and white rhino.

- What lessons can be learnt from South Africa's experience with these species ?
- What sorts of conservation policies are going to succeed in future ?
- The application of trade bans in foreign species listed as endangered or threatened under the ESA is based on the Western protectionist view that commercialisation and sustainable use of rare and endangered species is detrimental to their conservation. Do the rhino case histories support or refute this argument?

This submission therefore examines how the ESA relates to the conservation of rare and endangered foreign species, using white and black rhinos in South Africa as examples.

As the country holding 78% of Africa's wild rhino, and with a demonstrably successful track record in rhino conservation; South Africa has earned the right to express its opinion on what is

best for successful rhino conservation.

## SUMMARY

This paper discusses how live trade and sport hunting of white rhino has opened up new habitat for these animals in both state and privately run parks. This has contributed to the increase in their countrywide numbers from 1800 in 1968 to over 6370 today.

Black rhino were commercialised in 1989, and five private populations now exist in South Africa. Although to date, no hunting of black rhino has been officially sanctioned, the hunting of the occasional individually known post-breeding geriatric male black rhino is being seriously considered in some quarters.

This commercialisation and sustainable use of rhinos in South Africa (through live sales and limited sport hunting) has contributed significantly to the success of rhino conservation. It has achieved this by 1) generating additional revenue which has been ploughed back into conservation as well as 2) providing economic incentives for the private sector to look after and breed rhino. The country has also benefited from the influx of foreign exchange and the additional jobs created.

The rhino case histories suggest that the present blanket application of the ESA trade restrictions on listed endangered foreign species can limit the options available to range states to develop

appropriate successful conservation strategies. In particular, listing of a foreign species may limit the ability of range states to generate their own funds for conservation programs. This is contrary to CITES calls for range states to adopt measures to increase self-sufficiency.

Suggestions are made on how the ESA could be improved when dealing with rare foreign species...

- The ESA provides clear benefits (eg funding and provision of habitat) for listed US species; but provides no such benefits for listed foreign species. If foreign species are to be listed under the ESA, then provision should be made for financial support of necessary field conservation programmes.
- It appears there should be more consultation with range states before any foreign species is listed. Range States in most cases have the best idea of what conservation strategies will be most appropriate for their species, and thus have the biggest chance of success. For example, the blanket application of a trade ban on the importation of legal CITES approved hunting trophies from ESA listed endangered species in developing countries may be counter productive.
- There is a concern that application of the ESA to rare foreign species may foreclose some options that could potentially contribute to their conservation. For example the more progressive approach of sustainably using and commercialising South African

rhinos has benefitted their conservation as well as the people of the country.

- For conservation to succeed in the longer term in developing countries it must obtain the support of the people. In listing foreign species under the ESA it is imperative that such actions will 1) not alienate and disadvantage local people or 2) remove or reduce the economic incentive for the private sector to conserve the species.

To this end, more support should be forthcoming for controlled sustainable use and commercialisation of even rare species provided it can be demonstrated that this will not be to the detriment of the species.

This paper presents the views of the Natal Parks Board. However, it would be fair to say that the opinions expressed here would find agreement amongst most, if not all, the other major state conservation bodies in South Africa, as well as those individuals and organisations in the private sector who conserve and manage populations of rhino.

#### THE "SAVING" FROM EXTINCTION OF THE SOUTHERN WHITE RHINO

The southern white rhinoceros (*Ceratotherium simum simum*) is one of the very few large mammals which has recovered from the brink of extinction to increase greatly in both number and distribution.

By 1895, only one population of an estimated 20-50 animals remained in the south of what is today Hluhluwe-Umfolozi



Park in KwaZulu-Natal, South Africa.

With good protection, numbers in the park built up to the level where concerns were expressed about possible "overgrazing" by the burgeoning numbers of white rhino. The timely development of immobilisation and translocation techniques allowed the Natal Parks Board to move large numbers of white rhino to many other Parks and private Game Reserves/Ranches (both inside and outside South Africa), as well as to Zoos and Safari Parks around the world.

Over the period 1962-1994, the Natal Parks Board alone moved 3,629 white rhino to new homes. Other conservation agencies and vets in South Africa, Namibia, Zimbabwe and Kenya have also developed the capability to successfully move animals.

A century on, numbers of southern white rhino have increased from the one small founder population in Hluhluwe-Umfolozi Park to an estimated 6,750 in the wild spread throughout 184+ populations in 8 countries; with an additional 630 odd in Safari Parks and Zoos around the world.

Currently 94.4% of the southern white rhinos in the wild still occur in South Africa; with an estimated 1,250 of those on private land. Zimbabwe, Namibia and Kenya account for the bulk of the remainder.

This "saving" of the southern white rhino was recognised by the international community at the recent CITES COP9 as one of the world's great conservation success stories.

#### SUCCESSFUL CONSERVATION OF

#### THE ENDANGERED BLACK RHINO IN SOUTH AFRICA

Despite bans in the international trade in rhino horn, the black rhino (*Diceros bicornis*) in Africa has suffered a catastrophic decline in numbers. Since 1970 numbers in the wild have fallen by 98% from 65,000 to only 2,550. Despite this overall decline in numbers, black rhino in South Africa, like the white rhino, increased both in number and distribution. From only about 110 in two populations in 1933, numbers of black rhino in South Africa are currently approaching 1,000 in 22 populations; five of which occur on private land. This year at least another one new private and one new state population will be established.

Interestingly, the same three countries, Namibia, Zimbabwe & Kenya, account for the bulk of the balance of world's black rhino.

#### SOUTH AFRICA'S RHINO CONSERVATION SUCCESS OBTAINED AT A PRICE

One key reason behind South Africa's success (and indeed the success in other parks in Africa) is that the majority of remaining rhinos occur in smaller, fenced, well protected and intensively managed sanctuaries.

Sadly, rhinos have all but been poached out, or removed from, the vast unfenced areas of bush where they once roamed in large numbers - but where it was not possible to deploy sufficient manpower to limit poaching (eg. Luangwa Valley in

Zambia, the Selous Game Reserve in Tanzania, the Zambesi valley in Zimbabwe/Zambia, Chobe/Moremi in Botswana, and Tsavo N.P. in Kenya).

Successful rhino conservation is not cheap. It has been estimated that to successfully conserve and manage rhinos in South African sanctuaries can cost as much as \$1,000 to \$1,200 per square kilometre per year.

The financial cost of the intensive management and protection responsible for South Africa's conservation success has been great; and has almost entirely been provided from internal sources within South Africa without support from external donors. In 1994 the total budget from the state to South African public conservation departments looking after rhino was approximately R340 million rand (equiv. \$95 million). Private sector rhino conservation has been self funded.

As was mentioned at CITES COP 9, provisional results from an international study of the cost:benefits of different approaches to rhino conservation indicate that the size of in-situ conservation budgets has the biggest positive influence on likely success. South Africa's proud record with rhinos is not unrelated to its high expenditure on conservation.

A major problem currently facing not only South Africa, but also many other rhino range states, is that state conservation departments have for a number of years experienced budgetary cuts in real terms as government grants have failed to keep pace with inflation. In some cases grants have even been cut. Funding levels for state conservation departments in South Africa are now reaching critical levels. Thus it is becoming increasingly difficult

for African conservation bodies to maintain the levels of spending necessary for success. Short falls are expected in some areas in future.

Although the black rhino is listed as endangered under the ESA, no funds are currently forthcoming under the act to contribute to supporting protection of the species in-situ. Despite world wide bans in illegal horn trade, rhino horn still fetches high prices which stimulates demand and creates poaching pressure. Thus it is essential that additional funds are found to maintain adequate security for in-situ populations.

To date adequate levels of alternative support from external donors has not materialised to cover shortfalls in rhino conservation spending in range states. Even if such support if were to become available, it would be unlikely to be available on a sustainable basis.

The new US Rhinoceros Conservation Act is very positive, although unfortunately it appears that available funding will be very much lower than the \$10 million per annum envisaged earlier.

Seen against this background CITES COP 9 recognised that it is critical for rhino range states like South Africa to develop innovative means for self-generation of additional income to cover any current and future shortfalls in conservation funding. The CITES COP 9 resolution on the *Conservation of Rhinoceros in Asia and Africa* RECOMMENDS that all range states develop recovery plans for the rhinoceros populations which inter-alia; a) are appropriate for the situation in their country; b) will not adversely affect rhino conservation in other range states; c) include provision for the reinvestment of

*revenues derived from the use of rhinoceros that is consistent with the (CITES) convention, in order to offset the high costs of their conservation; and d) aim towards a long term goal of sustaining, on a basis of self-sufficiency, their rhinoceros conservation efforts.*

There is concern that the blanket banning of trade in endangered species and their products may be short-sighted and reduce conservation options available in range states. This is contrary to CITES which urges that all potential conservation options be evaluated.

For example the importing of black rhino trophies taken during conservation dehorning exercises in Zimbabwe would help pay for the cost of such measures, without being to the detriment of the species; yet the importation of such trophies into the USA was prohibited.

Over the years, excellent black rhino monitoring in Pilanesberg National Park, South Africa, led to the identification of three geriatric old males. All three animals subsequently died within a year of being identified - either being killed by other bulls, or dying a long slow death due to ill health, complications associated with old age and resultant malnutrition. Let us hypothetically suppose that an American hunter offered to pay \$250,000 to hunt one such geriatric male black rhino. The animal's reproductive life is over; and so hunting it is not going to be to the detriment of the species. The revenue generated from just one such rhino however could go a long way to contributing to the high costs of rhino conservation and/or to contribute to developing neighbouring communities. Under the current ESA the importation of such a trophy would be automatically

prohibited as the black rhino is classified as endangered, even if CITES permission was obtained.

Thus, from a South African perspective there is a need to consider each case on its conservation merit, rather than resorting to an "automatic" policy for all endangered species. It is important that no valid options for conservation are foreclosed.

## GENERATION OF ADDITIONAL INCOME FOR CONSERVATION IN SOUTH AFRICA

### 1) ECOTOURISM

Ecotourism has substantial potential in South Africa to generate revenue. Unfortunately not all rhino parks or wildlife reserves/ranches are accessible or suitable for substantial ecotourism. While non-consumptive ecotourism can generate additional funds, on its own it is not enough.

The current high interest rates in South Africa make it very expensive for conservation departments to borrow money to build new ecotourism developments such as camps and lodges. Putting in and maintaining the additional necessary infrastructure for mass ecotourism, such as serviceable tourist roads is also very expensive. Indeed, after paying loan repayments there may (in the short to medium term) be little surplus ecotourism revenue available to plough directly back into conservation.

Some people outside the country have suggested that South African Parks may be too cheap, and that the simple solution to make up budgetary shortfalls is simply to

increase charges. However this ignores the fact that 1) South Africa has a sizeable domestic ecotourism market which is already resisting what they see as "high prices"; 2) Air fares to South Africa from major tourist markets like Europe are much more expensive compared to those to East Africa because of the increased distances involved. South Africa therefore needs to keep its prices lower to maintain competitiveness and thereby increase the country's share of world tourism; 3) some of the most upmarket private reserves catering largely for wealthy overseas tourists are already charging high prices; and 4) when state parks are funded by the taxpayer, one cannot charge such high prices as to make them inaccessible to the very citizens who pay for them.

## 2) GAME SALES

Commercialisation of game has made a very positive contribution to South African conservation in the short term. The sale of 328 white rhinos and 36 black rhinos by the NPB on auction/secret bids has generated a total turnover of R12.92 million and R 10.37 million respectively in just six years. Until 1995 some white rhino were also sold by the NPB at a fixed price, and these are excluded from the above totals. Sales by the private sector and other conservation departments have also been excluded. Using current exchange rates Natal Parks Board rhino auction sales alone produce a gross turnover in excess of over \$1 million per annum. It is encouraging to note that this year average white rhino prices jumped by 47.%,

These game sales are highly beneficial as the major state conservation departments in South Africa with rhino (being parastatal), are able to plough back any additional revenues generated from game sales into conservation.

Rhinos are not the only game species sold on auction. The total turn over at game auctions annually in South Africa tops about R6 million (approx \$1.7 million). The recent NPB auction alone had a gross turnover of R 5 million (\$1.4 million). Given their high value, the bulk of the turnover at these auctions (in the region of 30%) is made up of rhino sales.

Before 1989, the Natal Parks Board sold its white rhinos at low prices that were effectively well below their true market value. However, since 1989 the Natal Parks Board have auctioned their rhinos, letting them find their true market value. In 1989 black rhinos were also sold to the private sector for the first time.

Apart from greatly increasing revenue for the Natal Parks Board, this increased commercialisation of rhinos has had a number of positive consequences...

- It sent a message to magistrates and police that rhino crimes were very serious and deserving of being accorded top priority. The high value of rhinos is now routinely quoted by conservation departments in court to persuade magistrates to hand down stiffer sentences. The South African Police Endangered Species Protection Unit also was founded the same year that rhinos were given a true "market-value" instead of only a "conservation value".

- The high live sale prices were used to lobby for substantial increases in the legal penalties for convictions relating to rhino poaching and illegal trading in rhino horn.
- The high prices fetched for live animals significantly increased the incentive for the private sector to breed up rhinos. This contributed to increasing the economic viability of game farming. Indeed the more conservation can demonstrate that it is the best form of land use, the more conservation will be supported by the majority of the public and the politicians. Also if game is profitable a bigger area of the country will be managed as wildlife habitat as opposed to being transformed into agricultural monocultures of sugar cane, gum trees; or used for more ecologically damaging beef farming.
- The abuse of hunting by some elements in the private sector when white rhinos were sold at a subsidised price (eg such as shooting all adult bulls or even breeding females) dropped substantially once rhinos fetched market related prices as the element largely responsible for these abuses were to a large extent eliminated from the market because they could no longer afford the new high prices being asked for rhino. The annual proportion of white rhinos hunted per annum on private land dropped from 10.5% to 3% once the live value of rhino increased. As a result, numbers of white rhino on private land have

been increasing, and now number around 1,250.

Thus, even after allowing for the costs of capture and translocation, live rhino sales have raised a substantial amount of much needed revenue for conservation as well as having a number of other positive spin-offs.

### 3) HUNTING

Adcock & Emslie (1994) have documented that hunting of white rhino in South Africa has been sustainable, and has substantially benefitted conservation. Some key points to note from this paper are that...

- The average annual hunt as a percentage of all white rhino in South Africa has averaged less than 1% per year since 1968 (when sport hunting of white rhino began in earnest).
- Since white rhino hunting started in South Africa in 1968, white rhino numbers have increased from 1,800 to over 6,370.
- Using current prices rhino hunting since 1968 has generated a gross turnover of equivalent to over \$22 million (excluding other trophy fees, taxidermy costs, additional hotel charges, ammunition, and additional tourism and curio expenditure). This generation of foreign exchange has been to the benefit of the country. (This year it is estimated that hunting fees and daily rates for rhino hunts alone will generate a turnover of close to \$2 million.)

- Trophy hunting of rhino has moved the economics of many ranching/game park enterprises towards profitability, and has promoted the continuing existence of white rhinos on private land. Hunting helps drive the live sale industry providing another way for owners to finance and justify their populations, and realise a return on their investment.
- The hunting and associated capture industries generate and contribute to the creation of many jobs in South Africa.
- State conservation bodies like North West Environmental Conservation (ex Bop Parks Board) and the Natal Parks Board have generated revenue from both hunting and live sales; whilst rhino have continued to increase in numbers in their areas.

Indeed removing rhinos to maintain populations below carrying capacity and hence keep populations productive is a key component of the strategy that has seen rhino numbers increase greatly.

As part of the data collection phase of an international cost:benefit study into different approaches to rhino conservation it was found that the United States imports the majority of hunting trophies (Richard Emslie pers.comm.). The proportion of white rhinos that are shot by American hunters has been as high as 74.9 % but in recent years has dropped to 61.7 %.

Should the importation of white rhino trophies into the USA ever be stopped for any reason, the impact on conservation in both the public and private sector would

be devastating....

- Live sale prices would crash and conservation departments would lose the substantial income that they need to top up budgets to ensure good protection of rhino.
- White rhino hunting prices would decline as more ranchers chased fewer clients.
- Potential income for ranchers from having white rhino would decline sharply. Many ranchers might unbundle themselves of rhino as the risk and expense of protecting rhino was no longer justified by the potential returns.
- The economic viability of game farming may be affected in some areas forcing farmers to change from game to cattle-farming, sugar-cane or forestry. This would result in habitat transformation to the detriment of many wildlife species.
- South Africa's FOREX earnings from conservation would decline.
- Many people in the hunting and game capture and subsidiary industries would lose their jobs. In rural areas it has been estimated that each worker can support as many as 15 people. Thus the number of people negatively affected would be much higher.

This brings one to the inescapable fact in Africa, that conservation cannot be divorced from human needs.

## CONSERVATION AS A VEHICLE FOR HUMAN DEVELOPMENT

For conservation in South Africa to succeed in the long term, it has to have the support of the majority of the people and the politicians.

The fact is that there are many very poor people in Africa. The more conservation can contribute to human upliftment and empowerment the better. It is very important that rhino conservation, and indeed all conservation, is not seen as a luxury that only "rich white-people" do. Conservationists cannot afford to give the impression to neighbouring communities that they "care more about animals than people".

It is essential that conservation wins friends and builds good relations with neighbouring communities. The more wildlife can create jobs and facilitate community upliftment (for example by facilitating the provision of clean water, schools or health clinics) the better. Also the more revenue, FOREX and jobs conservation can generate, the stronger its case will be for more funds from central government.

The early history of African game reserves and parks is one of colonialism. Parks were set up and people moved out. Strict protectionist policies were enforced with no thought for the welfare of the poor. Neighbouring communities saw little benefits from parks, yet the Park's wild animals caused damage to their crops, livestock and property. Over the decades antagonism was created between parks and their neighbours.

However, over recent years a major

paradigm shift has occurred in many African countries. Protectionism is now seen as discredited; while sustainable use of wildlife has been adopted as the cornerstone of the philosophy underpinning conservation in the region. This offers the best approach to helping generate the necessary funds for conservation. In the poorer countries of the world there is growing pressure for land and there is pressure to "use land or loose it". Sustainable Use enables conservationists to justify conservation as a productive form of land use.

Conservation developments are expanding in many areas of the region simply because they make good economic sense, and have the best potential to bring in wealth and jobs, and so help empower poor rural communities. Relationships between parks and neighbours is improving in many areas, and the antagonism of the past is being broken down. In some cases rural communities are now setting up their own game reserves. Without the commercialisation and sustainable use of wildlife this would never have occurred.

Good neighbour relations also contribute to successful conservation, as neighbouring communities are more inclined to provide intelligence information on potential poachers that may have moved into their area.

Therefore the application of the ESA to foreign species needs to consider the impacts of any listing on the people that may be negatively affected in the foreign country. Better still, the philosophy underpinning the ESA should be brought up to date to reflect the promotion of *sustainable use of wildlife for people* as set out in the world conservation strategy .

## THE ESA AND CITES

CITES provides a forum where expert specialist and range state opinions can be included in the decision-making progress when deciding about trade in any listed species.

The first listing of foreign species under the ESA occurred when there was no adequate international legislation governing trade in wildlife products.

However with the forming and growth of CITES, and because listed foreign species currently do not get any of the benefits that would be available for listed American species, consideration should be given as to whether the ESA should revert to only dealing with domestic US species.

ESA rating sometimes bear no relation to CITES ratings, with the latter being increasingly being based on objective scientific criteria. To avoid confusion the ESA should therefore adopt the CITES ruling on the status of foreign species.

## CONCLUSIONS

Based on our conservation experience in KwaZulu-Natal and the rest of South Africa I would fully support the sentiments expressed by the ministers from the four SACIM countries in their submission to Congressman Don Young, Chairman of the House Natural Resources Committee.

My first choice would be that we relied on CITES to control the trade in wildlife products. Thus I too would favour dropping foreign species from the ESA.

However if foreign species are to be included then I would suggest ...

- That it be mandatory that range states should be fully consulted before the inclusion of any species
- That the economic and conservation consequences of any listing are thoroughly evaluated. The history of South African rhino conservation is a good example where commercialisation and sustainable use clearly has benefitted rare species.
- That provision should be made for financial support to be given to foreign range states to promote successful recovery programmes of listed species as is done for species listed in the USA.
- That the ESA be adapted to be more flexible so that under certain circumstances it could allow sustainable use or commercialisation of selected endangered species provided this will not be to the detriment of the species. Where possible it is recommended that the new act is underpinned by the philosophy of conservation for people rather than protectionism.
- That the ESA brings its listing of foreign species more into line with the listings adopted by CITES.

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## Reauthorization of the Endangered Species Act

A Report to the Membership  
of the Society of American Foresters by  
the SAF Task Force on Reauthorization of  
the Endangered Species Act

*August 1991*



## EXECUTIVE SUMMARY

The Society of American Foresters (SAF) Council chartered the Endangered Species Act Reauthorization Task Force to study the influence of the act on management of forestland resources and to make recommendations for appropriate responses by the forestry profession on changes to the Endangered Species Act (ESA). The task force was supported by a group of professionals who provided diverse perspectives to their deliberations. The subsequent report reflects a regulatory/legislative review rather than a comprehensive scientific assessment of threatened and endangered species management in the forest. The task force reviewed the history of ESA, the issues surrounding its implementation, and specifically its impact on private forestlands.

To guide its review of the ESA and develop recommendations for changes to the act, the task force developed the following set of principles:

- Conservation of species and ecosystems as provided for by the ESA is important to society and the profession of forestry.
- A comprehensive approach to management of the nation's forests should take into account the entire biotic community providing habitat protection for all species in order to minimize listing of additional species.
- Species conservation must operate within the context of our democratic society that depends upon and values private enterprise and respects private property rights.
- As society's goals change, laws will be enacted and modified to meet these changing public values and expectations.
- The ESA must work in harmony with other laws to maintain and support healthy forest ecosystems to produce a range of both amenity and commodity benefits.
- Institutions and landowners, both public and private, must support the purpose and intent of the ESA.
- As US and world populations continue to increase, there will be additional demands on forestlands to produce a range of outputs. Application of the ESA must consider this need for commodities and a healthy environment.
- Basic private property rights guaranteed by the Fifth Amendment of the US Constitution must be considered, valued, and protected when private lands are necessary to conserve a listed species and the habitat upon which it depends.

The influence of the ESA on the practice of forestry and members of the forestry profession is highly important. The preservation of millions of acres of productive public lands for a single species in the Pacific Northwest and the indictment of three professional foresters on charges of criminally conspiring to destroy endangered species habitat in the Southeast are significant events for the profession.

As species listings increase, the act's impact and consequences will increase. The act itself is uncompromising legislation passed

during a troubled period of our history. It is doubtful the sponsors of the legislation fully understood all the potential implications of the act. However, its basic purpose—to provide a program for the conservation of threatened and endangered species—forcefully illustrates the human impact on our environment.

The methods of implementing the act, and its use to restrict forest management on both public and private lands, suggests modifications are necessary. These modifications must temper the initial goals of the act with the realities of society's need for forest resources.

The principles expressed by the ESA task force and its review of the act resulted in the following recommendations for consideration as Congress responds to the multitude of legislative proposals for reauthorizing the ESA.

The recommendations:

- Continue listing of species based solely on science.
- Provide for peer group review before completing the final listing process.
- Develop criteria and guidelines for listing below the species level and use scientific techniques to answer questions on speciation, subspeciation, and distinct populations.
- Mandate recovery plans that address physical and biological feasibility and consequences, economic efficiency, economic impacts, social or cultural acceptability, and operational or administrative practicality of recovery actions. Include a range of recovery alternatives and risk analysis of each.
- Complete recovery plans within one year of listing using a core group of an experienced recovery team, managers, planners, and scientists.
- Develop measurable and clearly defined recovery objectives and recovery timeframes for each species at lowest feasible social and economic costs.
- Evolve toward ecosystem management as public policy for public land management as scientific knowledge becomes available to support this approach.
- Prioritize species for recovery efforts to wisely allocate scarce financial resources.
- Change the composition of the Endangered Species Committee ("God Squad") to enhance involvement and knowledge of the issues by members.
- Recognize rights of private landowners and society's responsibility to mitigate costs for species protection on private land.
- Develop a phased approach from voluntary landowner plans to acquisition of property at fair market values for species protection.
- Delete citizen suit provisions against private landowners.

2 (The remainder of the report was placed in Committee hearing files )



## United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

October 6, 1995

Mr. Rolland Schmitten  
Director  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
Washington, D.C. 20230

Dear Rollie:

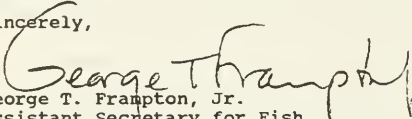
This letter is in regard to an issue raised at a recent hearing before the House Committee on Resources. During the September 20 hearing on proposed legislation to reauthorize the Endangered Species Act, Congressman Jack Metcalf expressed his frustration over his inability to obtain information from the National Marine Fisheries Service regarding a computer model on salmon resources and water flow in the Columbia River basin. Apparently this model is known as the "flush" model.

Congressman Metcalf stated that he had raised this issue with you previously and that you had indicated the information about the model would be made available. He also stated that as of the date of the hearing, he had not received the requested information and that, if necessary, he would consider seeking a subpoena to obtain the model from the Service.

At the hearing, I indicated to Congressman Metcalf that although I was unaware of the particular model that he referred to, I would contact you to bring his concerns to your attention.

If you have any questions about the hearing, please feel free to contact me. In my view, I would urge you to contact Congressman Metcalf directly in an attempt to resolve this matter as expeditiously as possible. Aside from this issue, I hope all is going well for you and the Service in this uncertain period.

Sincerely,

  
George T. Frampton, Jr.  
Assistant Secretary for Fish  
and Wildlife and Parks

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**PROTECTING AMERICA'S LIVING HERITAGE:  
A FAIR, COOPERATIVE AND SCIENTIFICALLY SOUND APPROACH  
TO IMPROVING THE ENDANGERED SPECIES ACT**

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**MARCH 6, 1995**

**PROTECTING AMERICA'S LIVING HERITAGE:  
A FAIR, COOPERATIVE AND SCIENTIFICALLY SOUND APPROACH  
TO IMPROVING THE ENDANGERED SPECIES ACT**

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### INTRODUCTION

The Clinton Administration is announcing a package of improvements to carry out the Endangered Species Act (ESA) in a fair, efficient and scientifically sound manner. These improvements build on the existing law to provide effective conservation of threatened and endangered species and fairness to people through innovative, cooperative, and comprehensive approaches.

The Administration believes that this nation needs to maintain its commitment to conserve imperiled species for the benefit of future generations as well as our own. The Endangered Species Act is a landmark environmental law enacted 20 years ago to preserve the ecosystems upon which endangered and threatened species and people depend. The law has been responsible for improving populations of declining species throughout the United States and has served as a model for international conservation efforts. The bald eagle, grizzly bear, and Aleutian Canada goose have been recovered from the brink of extinction and are approaching recovery. California condors and red wolves have been returned to the wild and are improving dramatically. American alligators, Arctic peregrine falcons, gray whales, and brown pelicans no longer need the Act's protection and have been removed from the list of threatened and endangered species. Overall, nearly 40 percent of the plants and animals protected under the Endangered Species Act are now stable or improving as a direct result of recovery efforts.

Although this nation has made considerable progress with endangered species conservation over the past twenty years, the task is not complete. To ensure that threatened and endangered species are protected and recovered, the Administration believes that the ESA needs to remain a strong, effective conservation tool.

At the same time, the Administration recognizes that implementation of the ESA should be improved by building stronger partnerships with States, local governments, private industry, and individuals; by exercising greater administrative flexibility to minimize socio-economic effects and assure fair treatment for landowners; and by reducing delay and uncertainty for States, local governments, private industry, and individuals.

The ESA provides a number of mechanisms—seldom used in the past—to resolve or avoid apparent conflicts between the needs of species threatened with extinction and the short-term demands of our society. In the last year, the Administration, working with non-Federal partners, has launched a series of initiatives to improve the ESA's effectiveness while minimizing its impact on people and their livelihoods. There will be other similar initiatives which together mark the beginning of a new approach to preserving ecosystem health and sustainability, one that looks to the future with comprehensive efforts to avoid crisis management and unpredictable piecemeal approaches.

For example, President Clinton convened a Forest Conference in Portland, Oregon, to address environmental and economic issues associated with management of Federal forest lands in California, Oregon, and Washington. In the 18 months following that conference, the Administration developed and has begun to implement a balanced Forest Plan which will preserve the northern spotted owl and the sustain the economy of timber communities in the Pacific Northwest. The Forest Plan will help prevent other species that depend on late-successional forests, including salmon and related fish species, from declining to the point where they need the protection of the ESA.

In another example, the Department of the Interior has published several special rules (called "4(d) rules" after the section of the ESA that authorizes them), which allow development of private lands to proceed while protecting threatened species. A special 4(d) rule developed for the coastal California gnatcatcher defers ESA requirements to a State planning process because this process will conserve the gnatcatcher and all other species that depend on the same habitat while allowing residential development to continue. In the States of Washington and California we have proposed a 4(d) rule which will generally exempt landowners with less than 80 acres of forestland from the Act's prohibitions on incidental take of spotted owls.

The Departments of the Interior and Commerce have joined with other Federal agencies to help prevent species from becoming threatened or endangered as a result of actions by these agencies. For example, on January 25, 1994, the U.S. Fish and Wildlife Service, Bureau of Land Management, National Park, National Marine Fisheries Service entered into a Memorandum of Understanding (MOU) initiated by the U.S. Forest Service to conserve candidate and proposed species. The Forest Service and the Fish and Wildlife Service quickly applied this MOU by signing a cooperative agreement to protect a rare species of salamander, which lives only on the ridges of the Shenandoah Mountains of Virginia and West Virginia. The cooperative agreement on the salamander was designed to stabilize and protect populations of the salamander on the George Washington National Forest so that the Fish and Wildlife Service will never have to list it as threatened or endangered.

The Department of the Interior has entered into three cooperative agreements with private industry to protect the red-cockaded woodpecker in the southeastern United States. These agreements, which have been signed with Georgia-Pacific Corporation, Hancock Timber Resource Group, and International Paper Company, make significant contributions toward the recovery of the woodpecker and will also benefit all of the species occurring in the longleaf pine ecosystem. Because these cooperative agreements benefit both the woodpecker and the timber companies, four other companies are in the initial stages of negotiating cooperative agreements with the Interior Department.

**TEN PRINCIPLES FOR FEDERAL ENDANGERED SPECIES ACT POLICY**

Ten principles guide the Administration's effort for reforming and implementing the Endangered Species Act:

1. **Base ESA decisions on sound and objective science.**

Federal Endangered Species Act policy must be based objectively on the best scientific information available.

2. **Minimize social and economic impacts.**

The ESA must be carried out in a manner that avoids unnecessary social and economic impacts upon private property and the regulated public, and minimizes those impacts that cannot be avoided, while providing effective protection and recovery of endangered and threatened species.

3. **Provide quick, responsive answers and certainty to landowners.**

The ESA must be carried out in an efficient, responsive and predictable manner to avoid unnecessary social and economic impacts and to reduce delay and uncertainty for Tribal, State and local governments, the private sector and individual citizens.

4. **Treat landowners fairly and with consideration.**

The ESA must be administered in a manner that assures fair and considerate treatment for those whose use of property is affected by its programs.

5. **Create incentives for landowners to conserve species.**

Cooperation with landowners in protecting and recovering species should be encouraged through use of incentives.

6. **Make effective use of limited public and private resources by focusing on groups of species dependent on the same habitat.**

To make effective use of limited resources, priority should be given to multi-species listings, recovery actions and conservation planning.

7. **Prevent species from becoming endangered or threatened.**

In carrying out its laws and regulations, the Federal Government should seek to prevent species from declining to the point at which they must be protected under the ESA.



8. **Promptly recover and de-list threatened and endangered species.**

The ESA's goal of bringing species back to the point at which they no longer require the Act's protection should be achieved as expeditiously as practicable.

9. **Promote efficiency and consistency.**

The ESA should be administered efficiently and consistently within and between the Departments of Commerce and the Interior.

10. **Provide state, tribal and local governments with opportunities to play a greater role in carrying out the ESA.**

Building new partnerships and strengthening existing ones with state, tribal, and local governments is essential to each of the nine previous principles and to the conservation of species under the ESA in a fair, predictable, efficient and effective manner.

## A PACKAGE OF REFORMS TO IMPROVE THE ENDANGERED SPECIES ACT

The Clinton Administration is announcing a package of reforms and proposed reforms that will have an immediate and positive effect on how the ESA is implemented throughout the Nation. This package builds on the ten principles set forth above. It describes administrative actions that have been taken or will be taken in the near future by the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). And the package identifies ways in which implementation of the ESA could be improved through legislative action by the Congress.

### 1. Base ESA Decisions on Sound and Objective Science.

**ISSUE DEFINITION:** Concerns exist that decisions made under the ESA have not always been objective or based on the best available scientific information.

**Administration Position:** Federal Endangered Species Act policy must be based objectively on the best scientific information available. Therefore the Administration has initiated the following reforms:

► **Peer review and information standards.** To ensure that Endangered Species Act policy is based on the best scientific information available, the NMFS and the FWS have issued a joint policy directive requiring independent scientific peer review of all proposals to list species and all draft plans to recover species within the timeframes required by the ESA. A separate directive establishes more rigorous standards for the kinds of scientific information used in making ESA decisions.

► **Listing petition standards.** The NMFS and the FWS have published draft guidelines for public review and comment that would set tougher, uniform standards for the scientific determination that there is "substantial information" to propose a species for listing and would place more burden on the petitioner to show that the action may be warranted.

### 2. Minimize Social and Economic Impacts.

**ISSUE DEFINITION:** The ESA has been criticized for not giving greater consideration to the social and economic consequences of listing species under the Act.

**Administration Position:** The ESA must be carried out in a manner that avoids unnecessary social and economic impacts upon private property and the regulated public, and minimizes those impacts that cannot be avoided, while providing effective protection and recovery of endangered and threatened species. Therefore, the Administration has initiated or supports the following reforms:

► **Recovery plan development and implementation.** The FWS and the NMFS have issued a policy directive on recovery planning that will require that any social or economic impacts resulting from implementation of recovery plans be minimized. To help ensure that this goal is achieved, this directive requires the NMFS and the FWS to scientifically identify the recovery needs of a species and then involve representatives of affected groups and provide stakeholders with an opportunity to participate in developing and implementing approaches to achieve that recovery. It also will require that diverse areas of expertise be represented on recovery teams.

► **Greater flexibility.** Flexible and creative approaches are necessary to prevent threatened species from becoming endangered and to provide the impetus to recover them. The CONGRESS should restore the distinction between a threatened species and an endangered species, which was originally intended, by providing the Secretary with flexibility to use, in consultation with the States, a wide range of administrative or regulatory incentives, prohibitions and protections for threatened species.

► **Landowner provisions.** The policies outlined below to give landowners quick answers and certainty and to treat landowners fairly will minimize social and economic impacts to the private sector.

### 3. Provide Quick, Responsive Answers and Certainty to Landowners.

**ISSUE DEFINITION:** Concerns have been expressed by landowners and others that delay and uncertainty in ESA decisions unnecessarily frustrate development and land use.

**Administration Position:** The ESA must be carried out in an efficient, responsive and predictable manner to avoid unnecessary social and economic impacts and to reduce delay and uncertainty for Tribal, State and local governments, the private sector and individual citizens. Therefore, the Administration has initiated or supports the following reforms:

► **Early identification of allowable activities.** A joint FWS/NMFS policy directive has been issued that requires the Services to identify, to the extent known at final listing, specific activities that are exempt from or that will not be affected by the section 9 prohibitions of the ESA concerning "take" of listed species. In addition, this directive requires the identification of a single point of contact in a region to assist the public in determining whether a particular activity would be prohibited under the ESA. These initiatives will help educate the affected publics, as well as increase certainty regarding the effect of species listings on proposed or ongoing activities.

► **Streamlining habitat conservation planning.** The FWS and the NMFS have published a draft habitat conservation planning handbook for public review and comment. It is intended to provide quicker and more consistent answers to applicants for incidental take permits. These permits allow economic use of private land for those who develop a

conservation plan under the requirements of section 10 of the ESA. The draft handbook recognizes three categories of habitat conservation plans based on the level of impact to the conservation of species (high, medium, or low impact). It requires simplified procedures and faster permitting for low and medium impact plans.

► *"No surprises"*. A policy of "No Surprises" has been issued by the FWS and the NMFS in habitat conservation planning under section 10 of the ESA. Under the policy, landowners who develop an approved habitat conservation plan for any endangered or threatened species will not be subject to later demands for a larger land or financial commitment if the plan is adhered to—even if the needs of any species covered by the plan increase over time. A landowner who agrees to provide for the long-term conservation of listed species in accordance with an approved habitat conservation plan is assured that activities on the land can proceed without having any additional mitigation requirements imposed, except as may be provided under the terms of the plan itself. Consequently, this policy provides the necessary assurances to landowners who are engaged in development activities over a period of many years that their habitat conservation planning permits will remain valid for the life of the permits.

► *Certainty for multi-species planning*. The CONGRESS should provide additional certainty to landowners who develop approved habitat conservation plans that protect non-listed species as well as listed species. Landowners who have satisfactorily demonstrated that they will protect candidate species or the significant habitat types within the area covered by a habitat conservation plan should be assured that their land use activities will not be disrupted if the candidate species or additional specific species not covered by the plan but dependent upon the same protected habitat type are subsequently listed under the ESA.

#### 4. Treat Landowners Fairly and With Consideration.

**ISSUE DEFINITION:** The ESA has been criticized for placing an unfair burden on landowners, particularly small landowners.

**Administration Position:** The ESA must be administered in a manner that assures fair and considerate treatment for those whose use of property is affected by its programs. Therefore the Administration has initiated or supports the following reforms:

► *Greater Federal responsibility*. The Administration is emphasizing the importance of having each Federal agency fully meet its responsibilities for conserving species in order to reduce impacts to private lands. It is facilitating economic use of private land by placing additional federal lands in protection, by acquiring military lands when bases are closed, by enrolling existing federal lands in habitat reserves, and by arranging for purchases of RTC lands.

► *Presumptions in favor of small landowners and low impact activities.* For threatened species we will propose regulations that allow land use activities by landowners that result in incidental take and individually or cumulatively have no lasting effect on the likelihood of the survival and recovery of a species and, therefore, have only negligible adverse effects. In particular, the following activities would not be regulated under this proposal:

- activities on tracts of land occupied by a single household and used solely for residential purposes;
- one-time activities that affect five acres of land or less of contiguous property if that property was acquired prior to the date of listing; and
- activities that are identified as negligible.

In cases in which the cumulative adverse effects of these exempted activities are likely to be significant, the Secretary would be required to issue a special rule. The Secretary also would be required to consider issuing a special rule to exempt activities on tracts of land larger than 5 acres that are also likely to be negligible.

The CONGRESS should extend this flexibility to include activities that result in incidental take of endangered species and the CONGRESS should provide that incidental take activities undertaken pursuant to an approved state conservation agreement (*see recommendations under point #10*) are not regulated.

## 5. Create Incentives for Landowners to Conserve Species.

ISSUE DEFINITION: Concern has been expressed that current implementation of the ESA fails to provide incentives for species conservation or even discourages such conservation.

Administration Position: Cooperation with landowners in protecting and recovering species should be encouraged. Therefore, the Administration will support or has already initiated the following reforms:

► *Incentives for voluntary enhancement.* The FWS and the NMFS will provide incentives to landowners who voluntarily agree to enhance the habitat on their lands by insulating them from restrictions if they later need to bring their land back to its previous condition. Landowners often are interested in managing their lands in ways that have as a by-product substantial benefit to threatened and endangered species. However, landowners currently are reluctant to manage their lands in this manner because they are concerned that any subsequent reduction in quantity or quality of the improved habitat would result in a violation of the ESA. The proposed policy would apply only to those

situations in which it is possible to measure a conservation benefit to a species from habitat improvements. In those cases, landowners would not be penalized for having made those improvements.

► *Incentives provided by other landowner provisions.* In addition, the "No Surprises" policy and the proposed legislative action to encourage landowners to participate in habitat conservation planning to protect multiple species will provide significant incentives for landowners to conserve species.

6. **Make Effective Use of Limited Public and Private Resources by Focusing on Groups of Species Dependent on the Same Habitat.**

**ISSUE DEFINITION:** The ESA has been criticized for placing too much emphasis on single species and not enough emphasis on groups of species and habitats.

**Administration Position:** To make effective use of limited public and private resources, priority should be given to multi-species listings, recovery actions and conservation planning. Therefore, the Administration has initiated or supports the following reforms:

► *Multi-species conservation emphasis.* The FWS and the NMFS have adopted a policy that emphasizes cooperative approaches to conservation of groups of listed and candidate species that are dependent on common habitats. It directs that multi-species listing decisions should be made where possible and that recovery plans should be developed and implemented for areas where multiple listed and candidate species occur. The policy further emphasizes the importance of integrating federal, state, tribal, and private efforts in cooperative multi-species efforts under the ESA.

► *Habitat conservation and recovery planning.* In addition, the habitat conservation planning and recovery planning policies in this package encourage multi-species and habitat-based conservation efforts.

7. **Prevent Species From Becoming Endangered or Threatened.**

**ISSUE DEFINITION:** Federal land-managing agencies, States, and others have expressed strong interest in having greater opportunities to put conservation measures in place that would remove threats to species and make their listing unnecessary.

**Administration Position:** In carrying out its laws and regulations, the Federal Government should seek to prevent species from declining to the point at which they must be protected under the ESA. Therefore the Administration has initiated the following reforms:

► *Federal/State conservation of imperiled species.* The Forest Service, BLM, National Park Service, FWS and NMFS have signed an agreement with the International Association of Fish and Wildlife Agencies that establishes a federal-state framework to cooperate in efforts to reduce, mitigate, and potentially eliminate the need to list species under the ESA.

► *Pre-listing conservation agreements.* The NMFS and the FWS have published draft guidance for public review and comment that encourages and sets uniform standards for the development of pre-listing conservation agreements with other parties to help make the listing of species unnecessary. The guidance also is intended to clarify the role of the FWS and NMFS in conservation of candidate species and ensure that there is regular, periodic review of the status of candidate species to help prevent their further decline.

► *Habitat conservation planning for non-listed species.* Providing additional certainty, as recommended above, to landowners who participate in habitat conservation plans that protect non-listed species as well as listed species will help prevent species from becoming threatened or endangered.

#### 8. Promptly Recover and De-list Threatened and Endangered Species.

**ISSUE DEFINITION:** Concerns have been expressed that too little emphasis is placed on recovering and de-listing species once they have been listed.

**Administration Position:** The goal of the ESA is to bring species back to the point at which they no longer require the Act's protection. Specifically, the Administration supports the following reforms to promptly restore threatened and endangered species to healthy status and then promptly de-list them:

► *Effective recovery.* Recovery should be the central focus of efforts under the ESA. Plans for the recovery of listed species should be more than discretionary blueprints. They should be meaningful and provide for implementation agreements that are legally binding on all parties. They should prescribe those measures necessary to achieve a species' recovery in as comprehensive and definitive manner as possible in order to provide greater certainty and quicker decisions in meeting the requirements of the ESA.

The CONGRESS should ensure that recovery planning:

- articulates definitive recovery objectives for populations (including levels that would initiate down-listing or de-listing) based on the best available scientific information and the other requirements of the ESA;
- provides all jurisdictional entities and stakeholders an opportunity to participate in development and implementation of the plan;

- seeks to minimize any social or economic impacts that may result from implementation;
- emphasizes multi-species, habitat-based approaches;
- is exempted from NEPA if the planning process is equivalent to that required by NEPA;
- facilitates integration of natural resource and land management programs at all jurisdictional levels; and
- identifies specific activities or geographic areas that are exempt from or that will not be affected by the section 9 prohibitions of the ESA concerning "take" of species covered by a plan.

The CONGRESS should improve the recovery planning process under the ESA by requiring all appropriate state and federal agencies to develop one or more specific agreements to implement a recovery plan. Upon approval of an implementation agreement by each of the appropriate state and federal agencies, the agreement should be legally binding and incorporated into the recovery plan. Recovery plans and implementing agreements should be reviewed and updated on a regular basis. An incentive should be created for federal agencies to approve implementation agreements by providing an easier, quicker section 7 process. Such implementation agreements should:

- expedite and provide assurances concerning the outcome of interagency consultations under section 7 and habitat conservation planning under section 10 of the ESA;
- ensure that actions taken pursuant to the agreement meet or exceed the requirements of the ESA; and
- require that each appropriate agency that signs an agreement comply with its terms.

► *More rational process for designating critical habitat.* The CONGRESS should modify the timing of critical habitat designations so that they result from the recovery planning process. Specifically:

- Designation of critical habitat should be based on the current standards of the ESA and the specific recommendations in recovery plans.



- Designation should occur concurrently with recovery plan approval, rather than the current requirement that it be designated at the time of listing.

► *Prompt down-listing and de-listing.* Prompt down-listing and de-listing of species when warranted are critical to the success of the ESA. The CONGRESS should give these actions emphasis equal to that of listing. Specifically:

- Down-listing or up-listing should be done administratively based on criteria in a recovery plan that meet the standards of the ESA and should not be subject to the current process required for listing, de-listing and changes in status of a species.
- The de-listing process should be triggered when the criteria established by a recovery plan are met.

► *Recovery planning deadlines.* The FWS and the NMFS adopted a policy that requires completion of a draft recovery plan within 18 months of listing and a final recovery plan within 12 months of completion of the draft plan.

► *Affirmative species conservation by Federal agencies.* Fourteen federal agencies have entered into an unprecedented agreement to improve efforts to recover listed species. Each agency has agreed to identify affirmative opportunities to recover listed species and to use its existing programs or authorities toward that end.

## 9. Promote Efficiency and Consistency.

**ISSUE DEFINITION:** The FWS and the NMFS have been criticized for carrying out the ESA inconsistently and inefficiently.

**Administration Position:** The ESA should be administered efficiently and consistently within and between the Departments of Commerce and the Interior. Therefore, the Administration has initiated the following reforms:

► *Joint NMFS/FWS standards and procedures.* The NMFS and the FWS are committed to administering the ESA in an efficient and consistent manner so that the public always gets one answer from the two agencies and from different offices within the same agency. The agencies will standardize their policies and procedures through issuance of joint orders, guidance, regulations, and increased training. Consequently, each policy identified in this package is being implemented or proposed jointly by the FWS and the NMFS.

► *Joint section 7 consultation policies and procedures.* The FWS and NMFS, for example, have published a draft handbook for public review and comment that will standardize the policies and procedures governing section 7 consultations between the Services and other federal agencies concerning actions by those federal agencies that may affect a listed species.

► *National federal working groups.* The agreement by 14 Federal agencies identified above established a national interagency working group to identify and coordinate improvements in Federal implementation of the ESA, including identification and resolution of issues associated with interagency consultations undertaken pursuant to section 7(a)(2) of the Act.

10. **Provide State, Tribal, and Local Governments with Opportunities to Play a Greater Role in Carrying Out the ESA.**

ISSUE DEFINITION: State, tribal, and local governments have expressed strong interest in greater utilization of their expertise and in playing a greater role in the ESA's implementation.

Administration Position: Building new partnerships and strengthening existing ones with state, tribal, and local governments is essential to achieving the ESA's goals in a fair, predictable, efficient and effective manner. Therefore, the Administration has initiated and will support the following reforms to establish a new cooperative federal-state relationship to achieve the goals of the ESA:

► *Participation of Indian tribal governments.* The Departments of the Interior and Commerce will, in consultation with Indian tribal governments, propose a policy directive to clarify the relationship of Indian tribal governments to the ESA and to provide greater opportunities for the participation of these governments in carrying out the Act.

► *Participation of State fish and wildlife agencies.* The FWS and the NMFS have issued a policy directive to their staff which recognizes that State fish and wildlife agencies generally have authority and responsibility for protection and management of fish, wildlife and their habitats, unless preempted by Federal authority, and that State authorities, expertise and working relationships with local governments and landowners are essential to achieving the goals of the ESA. The policy directive, therefore, requires that State expertise and information be used in pre-listing, listing, consultation, recovery, and conservation planning. It further requires that the Services encourage the participation of State agencies in the development and implementation of recovery plans.

► *Facilitate State efforts to retain management authority.* The CONGRESS should provide a State with opportunities and incentives to retain its jurisdiction over management of a threatened or endangered species within its jurisdiction. Specifically:

- To encourage states to prevent the need to protect species under the ESA, the ESA should explicitly encourage and recognize agreements to conserve a species within a state among all appropriate jurisdictional state and federal agencies. If a state has approved such a conservation agreement and the Secretary determines that it will remove the threats to the species and promote its recovery within the state, then the Secretary should be required to concur with the agreement and suspend the consequences under the ESA that would otherwise result from a final decision to list a species. The suspension should remain in place as long as the terms or goals of the agreement are being met. The Secretary should be authorized to revoke a suspension of the consequences of listing if the Secretary finds that a state conservation agreement is not being carried out in accordance with its terms.
- Conservation agreements among all appropriate state and federal agencies within a state should be reviewed and updated on a regular basis.
- Each appropriate federal and state land management agency that signs a conservation agreement to remove threats to a species and promote its recovery should be required to ensure that its actions are consistent with the terms of that agreement.
- Suspension of the consequences of listing a species pursuant to an approved state conservation agreement should be permitted at any point before or after a final listing decision.

► *Special consideration of State scientific information.* The CONGRESS should recognize that the States have substantial expertise concerning species within their jurisdiction by requiring that special consideration be given to State scientific knowledge and information on whether a species should be proposed for listing under the standards of the ESA, as described below:

- Petitions should be sent to each affected State fish and wildlife agency. If a State fish and wildlife agency recommends against proposing a species for listing or de-listing, the Secretary should be required to accept that recommendation unless the Secretary finds, after conducting independent scientific peer review, that the listing is required under the provisions of the ESA.

► *Lead State role on recovery planning.* The CONGRESS should provide States the opportunity to assume the lead responsibility for developing recovery plans and any component implementation agreements.

- In those cases in which a species' range extends beyond the boundaries of a single state, there should be a mechanism to ensure participation by and coordination with each affected state in the development of the plan for the species' recovery.
- The Secretary should approve a state-developed recovery plan unless the Secretary finds that it is not adequate to meet the standards of the ESA.

► *Lead State role on non-federal habitat conservation.* Decisions concerning use of non-federal lands should be made to the extent possible by state and local governments. Therefore, the CONGRESS should:

- Specifically authorize appropriate State agencies, as well as the Secretaries, to enter into voluntary pre-listing agreements with cooperating landowners to provide assurances that further conservation measures would not be required of the landowners should a species subsequently be listed. Landowners who have satisfactorily demonstrated that they will protect candidate species or the significant habitat types within the area covered by a pre-listing agreement should be assured that they will not be subjected to additional obligations to protect species if the candidate species or additional specific species not covered by the agreement but dependent upon the same protected habitat type are subsequently listed under the ESA.
- Provide a State with the opportunity to assume responsibility for issuing permits under section 10(a)(2) for areas within the State which have been identified for such assumption in an approved recovery plan or for which there is otherwise an approved comprehensive, habitat-based state program.

► *Remove obstacles to Federal/State/Tribal cooperation.* Federal, state, tribal and local governments should be able to cooperate and fully coordinate their actions in carrying out the ESA. Specifically, the Secretary should be exempt from the provisions of the Federal Advisory Committee Act in cooperating and coordinating with state, tribal or local governments in carrying out the ESA.

**CONCLUSION**

This reform package reflects the Administration's strong commitment to carry out the ESA in a fair, efficient and scientifically sound manner. The improvements that have been initiated and the legislative action recommended build on the existing law to provide effective conservation of threatened and endangered species and fairness to people through innovative, cooperative, and comprehensive approaches.

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